

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 2021.

599

No. 8, SPECIAL CALENDAR.

UNITED STATES OF AMERICA *EX RELATIONE* ALSOP
PROCESS COMPANY, APPELLANT,

vs.

JAMES WILSON, SECRETARY OF AGRICULTURE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MAY 4, 1909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2021.

UNITED STATES OF AMERICA *ex Relatione* ALSOP PROCESS COMPANY,
Appellant,

vs.

JAMES WILSON, Secretary of Agriculture.

a Supreme Court of the District of Columbia.

At Law. 51348.

UNITED STATES OF AMERICA *ex Relatione* ALSOP PROCESS COMPANY
vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

Mandamus.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition.*

Filed January 25, 1909.

In the Supreme Court of the District of Columbia.

At Law. 51348.

UNITED STATES OF AMERICA *ex Relatione* ALSOP PROCESS COMPANY
vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

Mandamus.

To the Honorable the Judges of the Supreme Court of the District of Columbia:

The undersigned petitioner respectfully represents that it is, and at all times mentioned herein has been a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and that as such is a resident of the State of Missouri, and is engaged in the manufacture of flour bleaching machinery, and the sale of the same throughout the United States of America, its territories and possessions, and as such is engaged in interstate business.

Your petitioner further represents and informs the Court that for

several years last past it has been, and now is, engaged in the manufacture and sale of machinery for practicing what is known as the Alsop Process for bleaching flour and that said machinery has been placed upon the market in the State of Missouri and elsewhere in the United States, and in the territories thereof, and in the District of Columbia, and has been sold to and universally employed by millers throughout the United States, its territories and possessions, as aforesaid, for bleaching flour.

Your petitioner further informs the Court that the respondent, James Wilson, is now, and at all times herein mentioned has been, the duly appointed, commissioned, qualified and acting Secretary of Agriculture of the United States.

Your petitioner informs the Court that said Alsop Process is for bleaching flour by the use of peroxide of nitrogen, and is protected as to the apparatus, method and process employed by Letters Patent of the United States of America (copies of which are annexed and marked Exhibits A, B, C, D), granting the exclusive right to
2 make, use and sell such apparatus and process for 17 years, and your petitioner is the owner of said patents by contract (Exhibit E) and assignments recorded May 23, 1903, Oct. 24, 1903, Jan. 12, 1906, in the records of Transfers in the Patent Office.

Your petitioner further informs the Court that it has been to great expense in advertising said process, in introducing the same to the trade, and prosecuting infringers.

Your petitioner further informs the Court that said Alsop Process has been almost universally adopted by the merchant flour mills throughout the United States, is regarded by the millers generally as a valuable adjunct to their milling apparatus, and that your petitioner has derived very considerable profit from the sale of said process, as aforesaid.

Your petitioner further informs the Court that said Alsop process as employed by the millers of the United States in the bleaching of flour manufactured by them is a harmless process, being accomplished by the passage of pure air through a flaming discharge of electricity and the application of the resultant gaseous medium to the freshly milled flour as the latter passes through an agitator (see Ex. B), and that the time required for such application is from seven to ten seconds; that said process as so employed results in giving flour a whiter tint and renders it more acceptable to the markets of this and other countries, and to the consuming public generally.

That the flour thus treated has no substance mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; that no valuable constituent of the flour has thereby
3 been wholly or in part abstracted; that the flour thus treated has not been mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed; that the flour thus treated does not contain any poisonous or other added deleterious ingredient which may render such flour injurious to health; that flour thus treated does not consist in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, and that it

is not the product of a diseased animal, or one that has died otherwise than by slaughter.

Your petitioner further states that under and by virtue of what is known as the Food and Drugs Act enacted by Congress on June 30, 1906, for preventing the manufacture and sale or transportation of adulterated or misbranded, poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, the said respondent, as Secretary of Agriculture, aforesaid, together with the Secretary of the Treasury and the Secretary of Commerce and Labor, as required by said law, did make certain alleged uniform rules and regulations for carrying out the provisions of said act, including the collection and examination of specimens of food and drugs manufactured or offered for sale in the District of Columbia, or any territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country; that said rules so made, as aforesaid, were promulgated by said Secretaries on the 17th day of October, 1906, and a copy of which, together with all amendments since made thereto, is hereto attached and made a part hereof.

Your petitioner further complains and informs the Court that prior to November 18th, 1908, the respondent, James Wilson, as Secretary of Agriculture inserted, or caused to be inserted, in certain milling journals and other periodicals throughout the country a notice to the effect that a hearing would be held on the subject of Bleached Flour at the Department of Agriculture, Washington, D. C., on November 18th, 1908; that at said time and place your petitioner, by a duly authorized officer, and by an attorney, and many millers from various parts of the country, appeared; that said hearing was held before the said James Wilson, Secretary of Agriculture, and the Board of Food and Drug Inspection, and continued through five days; that testimony for and against the process was introduced at said hearing; that the attorney for your petitioner conducted the case of the millers favoring the bleaching process, and that your petitioner's manager, John E. Mitchell, of St. Louis, Missouri, gave extended testimony at said hearing; that said hearing was public and the proceedings thereof were transcribed by a stenographer and made accessible to the public generally.

Your petitioner further complains and represents, on information and belief, that said hearing was without color or authority of law.

5 Your petitioner further complains and represents that subsequent to said hearing, to wit, on the 10th day of December, 1908, the respondent, James Wilson, as Secretary of Agriculture, as aforesaid, unlawfully, arbitrarily, and oppressively, and without color or right of law, issued a certain writing or bulletin purporting to

be a decision by him made as Secretary of Agriculture, as aforesaid, relative to bleached flour, which said decision or finding of the said Secretary of Agriculture is alleged by him to be based in part on the testimony introduced at the public hearing aforesaid, and considered by him; that said decision or finding is known as Food Inspection Decision 100, and is in words and figures as follows:

F. I. D. 100.

Issued December 10, 1908.

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
BOARD OF FOOD AND DRUG INSPECTION.

Food Inspection Decision 100.

Bleached Flour.

Flour bleached with nitrogen peroxid, as affected by the Food and Drugs Act of June 30, 1906, has been made the subject of a careful investigation extending over several months.

A public hearing on this subject was held by the Secretary of Agriculture and the Board of Food and Drug Inspection, beginning November 18, 1908, and continuing five days. At this hearing those who favored the bleaching process and those who opposed it were given equal opportunities to be heard.

6 It is my opinion, based upon all the testimony given at the hearing, upon the reports of those who have investigated the subject, upon the literature, and upon the unanimous opinion of the Board of Food and Drug Inspection, that flour bleached by nitrogen peroxid is an adulterated product under the Food and Drugs Act of June 30, 1906; that the character of the adulteration is such that no statement upon the label will bring bleached flour within the law; and that such flour can not legally be made or sold in the District of Columbia or in the Territories; or be transported or sold in interstate commerce; or be transported or sold in foreign commerce except under that portion of Section 2 of the law which reads:

* * * Provided that no article shall be deemed misbranded or adulterated within the provisions of this act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser. when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; * * *

In view of the extent of the bleaching process and of the immense quantity of bleached flour now on hand or in process of manufacture, no prosecutions will be recommended by this Department for manufacture and sale thereof in the District of Columbia or the Territories or for transportation or sale in interstate or foreign commerce, for a period of six months from the date hereof.

JAMES WILSON,
Secretary of Agriculture.

Washington, D. C., December 9, 1908.

Your petitioner further informs and complains to the Court that said bulletin and pretended decision, issued and circulated by the said respondent as Secretary of Agriculture, aforesaid, is unauthorized by said Act of Congress known as Food and Drugs Act, June 30,

7 1906, or by any other act of Congress, and that the promulgation and circulation of said decision has worked irreparable harm and injury to your petitioner and has, in effect, deprived your petitioner of its property without due process of law, in that since the issuance and promulgation of said unlawful decision aforesaid by the respondent herein, and by reason thereof your petitioner has been unable to sell its patented process and apparatus aforesaid, the prospective purchasers of said patented process and apparatus aforesaid, refusing to buy and install the same for fear that they or their customers will, upon the recommendation of the Secretary of Agriculture, be prosecuted for manufacturing or selling an adulterated food product in violation of the provisions of said Food and Drugs Act, June 30, 1906; all of which is to the great detriment and injury of your petitioner.

Your petitioner further represents and complains to the Court that the said finding or decision of the said James Wilson, Secretary of Agriculture, as aforesaid, was unlawfully, arbitrarily, and oppressively made, without regard to the terms, provisions and requirements of the Food and Drugs Act, June 30, 1906, and of the rules and regulations thereunder, so formulated and adopted by the three Secretaries aforesaid.

Your petitioner further represents and complains that the said James Wilson, respondent herein, as Secretary of Agriculture aforesaid, intended by the publication of said Food Inspection Decision 100, to include and publicly condemn, and he did thereby include and publicly condemn, flour manufactured and sold in interstate commerce which had been treated by the process aforesaid, of your

8 petitioner, and that such public condemnation of flour bleached by your petitioner's process, and the promulgation of said alleged decision holding that flour so bleached as aforesaid is an adulterated product under the Food and Drugs Act of June 30, 1906; and that such flour cannot legally be made or sold in the District of Columbia or in the territories; or be transported or sold in interstate commerce, or be transported or sold in foreign commerce except under the proviso of Section 2 of the law, was an unjust, unauthorized, arbitrary, oppressive, and unlawful exercise of authority, and that all such acts and things, aforesaid, were done without color or right of law and in disregard of the plain provisions of the said Food and Drugs Act, June 30, 1906, and of the rules and regulations thereunder formulated and adopted by the three Secretaries aforesaid.

And your petitioner further represents and informs the Court that unless the prayer of this writ be granted and the respondent herein be required to delete, nullify and render void his said unlawful finding or decision, aforesaid, and be compelled to proceed as respects the subject-matter hereof in strict conformity with the provisions of the said Food and Drugs Act, June 30, 1906, and of the

rules and regulations thereunder, adopted and promulgated by the three Secretaries, aforesaid, your petitioner is without remedy.

Wherefore, your petitioner respectfully prays this Honorable Court to issue its writ of mandamus in favor of your petitioner to be directed against the said James Wilson, as Secretary of Agriculture, as aforesaid, commanding him to withhold the recommendation of prosecutions against manufacturers of and dealers in flour bleached by the said Alsop process owned and controlled by
 9 your petitioner, whether such flour be manufactured or sold, or offered for sale, in the District of Columbia, or the territories of the United States, or be offered for sale or transportation in interstate or foreign commerce, and that said finding or decision, so made as aforesaid, by the said James Wilson, as Secretary of Agriculture, be revoked, and that he be commanded to cancel and annul the same, and not to deliver or circulate additional copies thereof, and that the said order so made by the said James Wilson, as Secretary of Agriculture, as aforesaid, be for naught held; and that the said James Wilson, Secretary of Agriculture, be commanded by this Honorable Court to proceed relative to the subject-matter hereof in strict conformity with the provisions of the Food and Drugs Act, June 30, 1906, and of the rules and regulations thereunder promulgated and adopted, as aforesaid.

ALSOP PROCESS COMPANY,
 By BRUCE S. ELLIOTT, *Attorney*.
 GEO. W. REA,
Solicitor for Complainant,
McGill Bldg., Washington, D. C.

BRUCE S. ELLIOTT,
 SAM B. JEFFRIES,
Of Counsel.

CITY OF ST. LOUIS,
State of Missouri, ss:

A. R. Byrd, Jr., being first duly sworn, deposes and states that he is the A. R. Byrd, Jr., who signed the foregoing petition for mandamus as secretary of the Alsop Process Company; that he is secretary of said company; that he has read the foregoing petition for mandamus and that the same is true of his own knowledge, except as to such facts as are therein stated on information and belief, and as to these he believes it to be true.

A. R. BYRD, JR.

Subscribed and sworn to before me this 21st day of January, 1909.

ADOLPH ABBEY,
Notary Public.

My commission expires Jan. 20, 1912.

United States Department of Agriculture, 7

OFFICE OF THE SECRETARY—Circular No. 21, Revised.

(Including Regulations 3, 17, 19, and 34 as amended by F. I. D. 79, 84, and 93, issued October 16, 1907, February 10, 1908, and May 23, 1908, respectively.)

RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE FOOD AND DRUGS ACT.

INTRODUCTION.

Under date of October 17, 1906, forty rules and regulations for the enforcement of the Food and Drugs Act, June 30, 1906, were adopted. Since that date four regulations, Nos. 3, 17, 19, and 34, have been amended, the first named by F. I. D. 79, "Collection of Samples," approved by Secretary Wilson of the Department of Agriculture, Secretary Cortelyou of the Treasury, and Secretary Straus of Commerce and Labor, and the other three by F. I. D. 84, "Label" and "Character of Name," and F. I. D. 93, "Denaturing," over the same signatures.

Regulation 2, Original Unbroken Packages, has been further interpreted by F. I. D. 86, and Regulation 9, Form of Guaranty, by F. I. D. 83, the latter an opinion rendered by the Attorney-General on the issue of a guaranty based upon a guaranty.

In accordance with Regulation 15, Wholesomeness of Colors in Preservatives; F. I. D. 76, on Dyes, Chemicals, and Preservatives in Foods; and F. I. D. 89, Relating to the Use in Foods of Benzoate of Soda and Sulphur Dioxid, have been issued over the signatures of the three Secretaries, constituting tentative decisions on these points pending the completion of investigations and the issuance of final regulations governing the use of these substances.

With the exception of these amendments and amplifications the regulations as originally issued remain unchanged, and no additional rules have been adopted, the revision issued under this date merely incorporating the changes enumerated.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., May 14, 1908.

LETTER OF TRANSMITTAL.

WASHINGTON, D. C., October 16, 1906.

The Secretaries of the Treasury, of Agriculture, and of Commerce and Labor.

SIRS: The Commission appointed to represent your several Departments in the formulation of uniform rules and regulations for the enforcement of the food and drugs act, approved June 30, 1906, has reached a unanimous agreement and respectfully submits the results of its deliberations and recommends their adoption.

Very respectfully,

H. W. WILEY.
JAMES L. GERRY.
S. N. D. NORTH.

RULES AND REGULATIONS.

GENERAL.

Regulation 1. Short Title of the Act.

The act, "For preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, shall be known and referred to as 'The Food and Drugs Act, June 30, 1906.'

Regulation 2. Original Unbroken Package.

[See also F. I. D. 86 for interpretation of this regulation.]

(Section 2.)

The term "original unbroken package" as used in this act is the original package, carton, case, can, box, barrel, bottle, phial, or other receptacle put up by the manufacturer, to which the label is attached, or which may be suitable for the attachment of a label, making one complete package of the food or drug article. The original package contemplated includes both the wholesale and the retail package.

Regulation 3. Collection of Samples.

[As amended by F. I. D. 79, October 8, 1907, to take effect November 1, 1907.]

(Section 4.)

Samples of unbroken packages shall be collected only by authorized agents of the Department of Agriculture, or by the health, food, or drug officer of any State, Territory, or the District of Columbia, when commissioned by the Secretary of Agriculture for this purpose.

Samples may be purchased in the open market, and, if in bulk, the marks, brands, or tags upon the package, carton, container, wrapper, or accompanying printed or written matter shall be noted. The collector shall also note the names of the vendor and agent through whom the sale was actually made, together with the date of the purchase. The collectors shall purchase representative samples.

A sample taken from bulk goods shall be divided into three parts, and each shall be labeled with the identifying marks.

If a package be less than 4 pounds, or in volume less than 2 quarts, three packages shall be purchased, when practicable, and the marks and tags upon each noted as above. When three samples are purchased, one sample shall be delivered to the Bureau of Chemistry or to such chemist or examiner as may be designated by the Secretary of Agriculture; the second and third samples shall be held under seal by the Secretary of Agriculture, who, upon request, shall deliver one of such samples to the party from whom purchased or to the party guaranteeing such merchandise.

When it is impracticable to collect three samples, or to divide the sample or samples, the order of delivery outlined above shall obtain, and in case there is a second sample the Secretary of Agriculture may, at his discretion, deliver such sample to parties interested.

All samples shall be sealed by the collector with a seal provided for the purpose.

Regulation 4. Methods of Analysis

(Section 4.)

Unless otherwise directed by the Secretary of Agriculture, the methods of analysis employed shall be those prescribed by the Association of Official Agricultural Chemists and the United States Pharmacopœia.

Regulation 5. Hearings.

(Section 4.)

(a) When the examination or analysis shows that the provisions of the food and drugs act, June 30, 1906, have been violated, notice of that fact, together with a copy of the findings, shall be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in the food and drugs act, June 30, 1906, and a date shall be fixed at which such party or parties may be heard before the Secretary of Agriculture, or such other official connected with the food and drug inspection service as may be commissioned by him for that purpose. The hearings shall be had at a place, to be designated by the Secretary of Agriculture, most convenient for all parties concerned. These hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorney and may propound proper interrogatories and submit oral or written evidence to show any fault or error in the findings of the analyst or examiner. The Secretary of Agriculture may order a reexamination of the sample or have new samples drawn for further examination.

(b) If the examination or analysis be found correct the Secretary of Agriculture shall give notice to the United States district attorney as prescribed.

(c) Any health, food, or drug officer or agent of any State, Territory, or the District of Columbia who shall obtain satisfactory evidence of any violation of the food and drugs act, June 30, 1906, as provided in section 5 thereof, shall first submit the same to the Secretary of Agriculture, in order that the latter may cause notice to be given to the guarantor or to the party from whom the sample was obtained.

Regulation 6. Publication.

(Section 4.)

(a) When a judgment of the court shall have been rendered there may be a publication of the findings of the examiner or analyst, together with the findings of the court.

(b) This publication may be made in the form of circulars, notices, or bulletins, as the Secretary of Agriculture may direct, not less than thirty days after judgment.

(c) If an appeal be taken from the judgment of the court before such publication, notice of the appeal shall accompany the publication.

Regulation 7. Standards for Drugs.

(Section 7.)

(a) A drug bearing a name recognized in the United States Pharmacopœia or National Formulary, without any further statement respecting its character, shall be required to conform in strength, quality, and purity to the standards prescribed or indicated for a drug of the same name recognized in the United States Pharmacopœia or National Formulary, official at the time.

(b) A drug bearing a name recognized in the United States Pharmacopœia or National Formulary, and branded to show a different standard of strength, quality, or purity, shall not be regarded as adulterated if it conforms to its declared standard.

Regulation 8. Formulas—Proprietary Foods.

(Section 8, last paragraph.)

(a) Manufacturers of proprietary foods are only required to state upon the label the names and percentages of the materials used, in so far as the Secretary of Agriculture may find this to be necessary to secure freedom from adulteration and misbranding.

(b) The factories in which proprietary foods are made shall be open at all reasonable times to the inspection provided for in Regulation 16.

Regulation 9. Form of Guaranty.

[See also F. I. D. 83 for opinion of the Attorney-General on the issue of a guaranty based upon a former guaranty.]

(Section 9.)

(a) No dealer in food or drug products will be liable to prosecution if he can establish that the goods were sold under a guaranty by the wholesaler, manufacturer, jobber, dealer, or other party residing in the United States from whom purchased.

(b) A general guaranty may be filed with the Secretary of Agriculture by the manufacturer or dealer and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty with the words "Guaranteed under the food and drugs act, June 30, 1906."

(c) The following form of guaranty is suggested:

I (we) the undersigned do hereby guarantee that the articles of foods or drugs manufactured, packed, distributed, or sold by me (us) [specifying the same as fully as possible] are not adulterated or misbranded within the meaning of the food and drugs act, June 30, 1906.

(Signed in ink.)

[Name and place of business of wholesaler, dealer, manufacturer, jobber, or other party.]

(d) If the guaranty be not filed with the Secretary of Agriculture as above, it should identify and be attached to the bill of sale, invoice, bill of lading, or other schedule giving the names and quantities of the articles sold.

ADULTERATION.

Regulation 10. Confectionery.

(Section 7.)

(a) Mineral substances of all kinds (except as provided in Regulation 15) are specifically forbidden in confectionery whether they be poisonous or not.

(b) Only harmless colors or flavors shall be added to confectionery.

(c) The term "narcotic drugs" includes all the drugs mentioned in section 8, food and drugs act, June 30, 1906, relating to foods, their derivatives and preparations, and all other drugs of a narcotic nature.

Regulation 11. Substances Mixed and Packed with Foods.

(Section 7, under "Foods.")

No substance may be mixed or packed with a food product which will reduce or lower its quality or strength. Not excluded under this provision are substances properly used in the preparation of food products for clarification or refining, and eliminated in the further process of manufacture.

Regulation 12. Coloring, Powdering, Coating, and Staining.

(Section 7, under "Foods.")

(a) Only harmless colors may be used in food products.

(b) The reduction of a substance to a powder to conceal inferiority in character is prohibited.

(c) The term "powdered" means the application of any powdered substance to the exterior portion of articles of food, or the reduction of a substance to a powder.

(d) The term "coated" means the application of any substance to the exterior portion of a food product.

(e) The term "stain" includes any change produced by the addition of any substance to the exterior portion of foods which in any way alters their natural tint.

Regulation 13. Natural Poisonous or Deleterious Ingredients.

(Section 7, paragraph 5, under "Foods.")

Any food product which contains naturally a poisonous or deleterious ingredient does not come within the provisions of the food and drugs act, June 30, 1906, except when the presence of such ingredient is due to filth, putrescence, or decomposition.

Regulation 14. External Application of Preservatives.

(Section 7, paragraph 5, under "Foods," proviso.)

(a) Poisonous or deleterious preservatives shall only be applied externally, and they and the food products shall be of a character which shall not permit the permeation of any of the preservative to the interior, or any portion of the interior, of the product.

(b) When these products are ready for consumption, if any portion of the added preservative shall have penetrated the food product, then the proviso of section 7, paragraph 5, under "Foods," shall not obtain, and such food products shall then be subject to the regulations for food products in general.

(c) The preservative applied must be of such a character that, until removed, the food products are inedible.

Regulation 15. Wholesomeness of Colors and Preservatives.

[See also F. I. D. 76 and 89 for rulings under this head pending complete investigations and final decision.]

(Section 7, paragraph 5, under "Foods.")

(a) Respecting the wholesomeness of colors, preservatives, and other substances which are added to foods, the Secretary of Agriculture shall

determine from chemical or other examination, under the authority of the agricultural appropriation act, Public 382, approved June 30, 1906, the names of those substances which are permitted or inhibited in food products; and such findings, when approved by the Secretary of the Treasury and the Secretary of Commerce and Labor, shall become a part of these regulations.

(b) The Secretary of Agriculture shall determine from time to time, in accordance with the authority conferred by the agricultural appropriation act, Public 382, approved June 30, 1906, the principles which shall guide the use of colors, preservatives, and other substances added to foods; and when concurred in by the Secretary of the Treasury and the Secretary of Commerce and Labor, the principles so established shall become a part of these regulations.

Regulation 16. Character of the Raw Materials.

(Section 7, paragraph 1, under "Drugs;" paragraph 6, under "Foods.")

(a) The Secretary of Agriculture, when he deems it necessary, shall examine the raw materials used in the manufacture of food and drug products, and determine whether any filthy, decomposed, or putrid substance is used in their preparation.

(b) The Secretary of Agriculture shall make such inspections as often as he may deem necessary.

MISBRANDING.

Regulation 17. Label.

[As amended by F. I. D. 84, January 31, 1908, taking effect February 10, 1908.]

(Section 8.)

(a) The term "label" applies to any printed, pictorial, or other matter upon or attached to any package of a food or drug product, or any container thereof subject to the provisions of this act.

(b) The principal label shall consist, first, of all information which the food and drugs act, June 30, 1906, specifically requires, to wit, the name of the place of manufacture in the case of food compounds or mixtures sold under a distinctive name; statements which show that the articles are compounds, mixtures, or blends; the words "compound," "mixture," or "blend," and words designating substances or their derivatives and proportions required to be named in the case of foods and drugs. All this information shall appear upon the principal label, and should have no intervening descriptive or explanatory reading matter. Second, if the name of the manufacturer and place of manufacture are given, they should also appear upon the principal label. Third, preferably upon the principal label, in conjunction with the name of the substance, such phrases as "artificially colored," "colored with sulphate of copper," or any other such descriptive phrases necessary to be announced should be conspicuously displayed. Fourth, elsewhere upon the principal label other matter may appear in the dis-

cretion of the manufacturer. If the contents are stated in terms of weight or measure, such statement should appear upon the principal label and must be couched in plain terms, as required by Regulation 29.

(c) If the principal label is in a foreign language, all information required by law and such other information as indicated above in (b) shall appear upon it in English. Besides the principal label in the language of the country of production, there may be also one or more other labels, if desired, in other languages, but none of them more prominent than the principal label, and these other labels must bear the information required by law, but not necessarily in English. The size of the type used to declare the information required by the act shall not be smaller than 8-point (brevier) capitals: *Provided*, That in case the size of the package will not permit the use of 8-point type, the size of the type may be reduced proportionately.

(d) Descriptive matter upon the label shall be free from any statement, design, or device regarding the article or the ingredients or substances contained therein, or quality thereof, or place of origin, which is false or misleading in any particular. The term "design" or "device" applies to pictorial matter of every description, and to abbreviations, characters, or signs for weights, measures, or names of substances.

(e) An article containing more than one food product or active medicinal agent is misbranded if named after a single constituent.

In the case of drugs the nomenclature employed by the United States Pharmacopœia and the National Formulary shall obtain.

(f) The use of any false or misleading statement, design, or device appearing on any part of the label shall not be justified by any statement given as the opinion of an expert or other person, nor by any descriptive matter explaining the use of the false or misleading statement given as the opinion of an expert or other person, nor by any descriptive matter explaining the use of the false or misleading statement, design, or device.

Regulation 18. Name and Address of Manufacturer.

(Section 8.)

(a) The name of the manufacturer or producer, or the place where manufactured, except in case of mixtures and compounds having a distinctive name, need not be given upon the label, but if given, must be the true name and the true place. The words "packed for ———," "distributed by ———," or some equivalent phrase, shall be added to the label in case the name which appears upon the label is not that of the actual manufacturer or producer, or the name of the place not the actual place of manufacture or production.

(b) When a person, firm, or corporation actually manufactures or produces an article of food or drug in two or more places, the actual place of manufacture or production of each particular package need

not be stated on the label except when in the opinion of the Secretary of Agriculture the mention of any such place, to the exclusion of the others, misleads the public.

Regulation 19. Character of Name.

(As amended by F. I. D. 84, January 31, 1908, taking effect February 10, 1908.)

(Section 8.)

(a) A simple or unmixed food or drug product not bearing a distinctive name should be designated by its common name in the English language; or if a drug, by any name recognized in the United States Pharmacopœia or National Formulary. No further description of the components or qualities is required, except as to content of alcohol, morphine, etc.

(b) The use of a geographical name shall not be permitted in connection with a food or drug product not manufactured or produced in that place, when such name indicates that the article was manufactured or produced in that place.

(c) The use of a geographical name in connection with a food or drug product will not be deemed a misbranding when by reason of long usage it has come to represent a generic term and is used to indicate a style, type, or brand; but in all such cases the State or Territory where any such article is manufactured or produced shall be stated upon the principal label.

(d) A foreign name which is recognized as distinctive of a product of a foreign country shall not be used upon an article of domestic origin except as an indication of the type or style of quality or manufacture, and then only when so qualified that it can not be offered for sale under the name of a foreign article.

Regulation 20. Distinctive Name.

(Section 8.)

(a) A "distinctive name" is a trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound.

(b) A distinctive name shall not be one representing any single constituent of a mixture or compound.

(c) A distinctive name shall not misrepresent any property or quality of a mixture or compound.

(d) A distinctive name shall give no false indication of origin, character, or place of manufacture, nor lead the purchaser to suppose that it is any other food or drug product.

Regulation 21. Compounds, Imitations, or Blends Without Distinctive Name.

(Section 8.)

(a) The term "blend" applies to a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only.

(b) If any age is stated, it shall not be that of a single one of its constituents, but shall be the average of all constituents in their respective proportions.

(c) Coloring and flavoring can not be used for increasing the weight or bulk of a blend.

(d) In order that colors or flavors may not increase the volume or weight of a blend, they are not to be used in quantities exceeding 1 pound to 800 pounds of the blend.

(e) A color or flavor can not be employed to imitate any natural product or any other product of recognized name and quality.

(f) The term "imitation" applies to any mixture or compound which is a counterfeit or fraudulent simulation of any article of food or drug.

Regulation 22. Articles without a Label.

(Section 8, paragraph 1, under "Drugs;" paragraph 1, under "Foods.")

It is prohibited to sell or offer for sale a food or drug product bearing no label upon the package or no descriptive matter whatever connected with it, either by design, device, or otherwise, if said product be an imitation of or offered for sale under the name of another article.

Regulation 23. Proper Branding not a Complete Guaranty.

Packages which are correctly branded as to character of contents, place of manufacture, name of manufacturer, or otherwise, may be adulterated and hence not entitled to enter into interstate commerce.

Regulation 24. Incompleteness of Branding.

A compound shall be deemed misbranded if the label be incomplete as to the names of the required ingredients. A simple product does not require any further statement than the name or distinctive name thereof, except as provided in Regulations 19 (a) and 28.

Regulation 25. Substitution.

(Sections 7 and 8.)

(a) When a substance of a recognized quality commonly used in the preparation of a food or drug product is replaced by another substance not injurious or deleterious to health, the name of the substituted substance shall appear upon the label.

(b) When any substance which does not reduce, lower, or injuriously affect its quality or strength, is added to a food or drug product, other than that necessary to its manufacture or refining, the label shall bear a statement to that effect.

Regulation 26. Waste Materials.

(Section 8.)

When an article is made up of refuse materials, fragments, or trimmings, the use of the name of the substance from which they are derived, unless accompanied by a statement to that effect, shall be deemed a misbranding. Packages of such materials may be labeled "pieces," "stems," "trimmings," or with some similar appellation.

Regulation 27. Mixtures or Compounds with Distinctive Names.

(Section 8. First proviso under "Foods," paragraph 1.)

(a) The terms "mixtures" and "compounds" are interchangeable and indicate the results of putting together two or more food products.

(b) These mixtures or compounds shall not be imitations of other articles, whether simple, mixt, or compound, or offered for sale under the name of other articles. They shall bear a distinctive name and the name of the place where the mixture or compound has been manufactured or produced.

(c) If the name of the place be one which is found in different States, Territories, or countries, the name of the State, Territory, or country, as well as the name of the place, must be stated.

Regulation 28. Substances named in Drugs or Foods.

(Section 8. Second under "Drugs;" second under "Foods.")

(a) The term "alcohol" is defined to mean common or ethyl alcohol. No other kind of alcohol is permissible in the manufacture of drugs except as specified in the United States Pharmacopœia or National Formulary.

(b) The words alcohol, morphine, opium, etc., and the quantities and proportions thereof, shall be printed in letters corresponding in size with those prescribed in Regulation 17, paragraph (c).

(c) A drug, or food product except in respect of alcohol, is misbranded in case it fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, heroin, cocaine, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

(d) A statement of the maximum quantity or proportion of any such substances present will meet the requirements, provided the maximum stated does not vary materially from the average quantity or proportion.

(e) In case the actual quantity or proportion is stated it shall be the average quantity or proportion with the variations noted in Regulation 29.

(f) The following are the principal derivatives and preparations made from the articles which are required to be named upon the label:

ALCOHOL, ETHYL: (*Cologne spirits, Grain alcohol, Rectified spirits, Spirits, and Spirits of wine.*)

Derivatives—

Aldehyde, Ether, Ethyl acetate, Ethyl nitrite, and Paraldehyde.

Preparations containing alcohol—

Bitters, Brandies, Cordials, Elixirs, Essences, Fluidextracts, Spirits, Sirups, Tinctures, Tonics, Whiskies, and Wines.

MORPHINE, ALKALOID:

Derivatives—

Apomorphine, Dionine, Peronine, Morphine acetate, Hydrochloride, Sulphate, and other salts of morphine.

Preparations containing morphine or derivatives of morphine—

Bougies, Catarrh Snuff, Chlorodyne, Compound powder of morphine, Crayons, Elixirs, Granules, Pills, Solutions, Sirups, Suppositories, Tablets, Triturates, and Troches.

OPIUM, GUM:

Preparations of Opium—

Extracts, Denarcotized opium, Granulated opium, and Powdered opium, Bougies, Brown mixture, Carminative mixtures, Crayons, Dover's powder, Elixirs, Liniments, Ointments, Paregoric, Pills, Plasters, Sirups, Suppositories, Tablets, Tinctures, Troches, Vinegars, and Wines.

Derivatives—

Codeine, Alkaloid, Hydrochloride, Phosphate, Sulphate, and other salts of codeine.

Preparations containing codeine or its salts—

Elixirs, Pills, Sirups, and Tablets.

COCAINE, ALKALOID:

Derivatives—

Cocaine hydrochloride, Oleate, and other salts.

Preparations containing cocaine or salts of cocaine—

Coca leaves, Catarrh powders, Elixirs, Extracts, Infusion of coca, Ointments, Paste pencils, Pills, Solutions, Sirups, Tablets, Tinctures, Troches, and Wines.

HEROIN:

Preparations containing heroin—

Sirups, Elixirs, Pills, and Tablets.

ALPHA AND BETA EUCAINE:

Preparations—

Mixtures, Ointments, Powders, and Solutions.

CHLOROFORM:

Preparations containing chloroform—

Chloranodyne, Elixirs, Emulsions, Liniments, Mixtures, Spirits, and Sirups.

CANNABIS INDICA:

Preparations of cannabis indica—

Corn remedies, Extracts, Mixtures, Pills, Powders, Tablets, and Tinctures.

CHLORAL HYDRATE (*Chloral*, U. S. Pharmacopoeia, 1890):

Derivatives—

Chloral acetophenonoxim, Chloral alcoholate, Chloralamide, Chloralimide, Chloral orthoform, Chloralose, Dormiol, Hypnal, and Uraline.

Preparations containing chloral hydrate or its derivatives—

Chloral camphorate, Elixirs, Liniments, Mixtures, Ointments, Suppositories, Sirups, and Tablets.

ACETANILIDE (*Antifebrine, Phenylacetamide*):*Derivatives—*

Acetphenetidine, Citrophen, Diacetanilide, Lactophenin, Methoxy-acetanilide, Methylacetanilide, Para-Iodoacetanilide, and Phenacetine.

Preparations containing acetanilide or derivatives—

Analgesics, Antineuralgics, Antirheumatics, Cachets, Capsules, Cold remedies, Elixirs, Granular effervescing salts, Headache powders, Mixtures, Pain remedies, Pills, and Tablets.

Regulation 29. Statement of Weight or Measure.

(Section 8. Third under "Foods.")

(a) A statement of the weight or measure of the food contained in a package is not required. If any such statement is printed, it shall be a plain and correct statement of the average net weight or volume, either on or immediately above or below the principal label, and of the size of letters specified in Regulation 17.

(b) A reasonable variation from the stated weight for individual packages is permissible, provided this variation is as often above as below the weight or volume stated. This variation shall be determined by the inspector from the changes in the humidity of the atmosphere, from the exposure of the package to evaporation or to absorption of water, and the reasonable variations which attend the filling and weighing or measuring of a package.

Regulation 30. Method of Stating Quantity or Proportion.

(Section 8.)

In the case of alcohol the expression "quantity" or "proportion" shall mean the average percentage by volume in the finished product. In the case of the other ingredients required to be named upon the label, the expression "quantity" or "proportion" shall mean grains or minims per ounce or fluid ounce, and also, if desired, the metric equivalents therefor, or milligrams per gram or per cubic centimeter, or grams or cubic centimeters per kilogram or per liter; provided that these articles shall not be deemed misbranded if the maximum of quantity or proportion be stated, as required in Regulation 28 (d).

EXPORTS AND IMPORTS OF FOODS AND DRUGS.**Regulation 31. Preparation of Food Products for Export.**

(Section 2.)

(a) Food products intended for export may contain added substances not permitted in foods intended for interstate commerce, when the addition of such substances does not conflict with the laws of the countries to which the food products are to be exported and when such substances are added in accordance with the directions of the foreign purchaser or his agent.

(b) The exporter is not required to furnish evidence that goods have been prepared or packed in compliance with the laws of the foreign country to which said goods are intended to be shipped, but such shipment is made at his own risk.

(c) Food products for export under this regulation shall be kept separate and labeled to indicate that they are for export.

(d) If the products are not exported they shall not be allowed to enter interstate commerce.

Regulation 32. Imported Food and Drug Products.

(Section 11.)

(a) Meat and meat food products imported into the United States shall be accompanied by a certificate of official inspection of a character to satisfy the Secretary of Agriculture that they are not dangerous to health, and each package of such articles shall bear a label which shall identify it as covered by the certificate, which certificate shall accompany or be attached to the invoice on which entry is made.

(b) The certificate shall set forth the official position of the inspector and the character of the inspection.

(c) Meat and meat food products as well as all other food and drug products of a kind forbidden entry into or forbidden to be sold, or restricted in sale in the country in which made or from which exported, will be refused admission.

(d) Meat and meat food products which have been inspected and past thru the customs may, if identity is retained, be transported in interstate commerce.

Regulation 33. Declaration.

(Section 11.)

(a) All invoices of food or drug products shipped to the United States shall have attached to them a declaration of the shipper, made before a United States consular officer, as follows:

I, the undersigned, do solemnly and truly declare that I am the _____ of
(Manufacturer, agent, or shipper.)
the merchandise herein mentioned and described, and that it consists of food or drug products which contain no added substances injurious to health.

These products were grown in _____ and manufactured in _____ by _____
(Country.) (Country.) (Name.)
_____ during the year _____, and are exported from _____ and consigned to _____
(City.) (City.)
(Name of manufacturer.)

The products bear no false labels or marks, contain ^{no} added coloring matter or preservative _____, and are not of a character to cause prohibition or restriction
(Name of added color or preservative.)

in the country where made or from which exported.

Dated at — this — day of —, 19 —.

(Signed): — — —.

(b) In the case of importations to be entered at New York, Boston, Philadelphia, Chicago, San Francisco, and New Orleans, and other ports where food and drug inspection laboratories shall be established, this declaration shall be attached to the invoice on which entry is made. In other cases the declaration shall be attached to the copy of the invoice sent to the Bureau of Chemistry.

Regulation 34. Denaturing.

[As amended by F. I. D. 93, May 12, 1908.]

(Section 11.)

Unless otherwise declared on the invoice, all substances ordinarily used as food products will be treated as such. Shipments of substances ordinarily used as food products intended for technical purposes should be accompanied by a declaration stating that fact. Such products should be denatured before entry, but denaturing may be allowed under customs supervision with the consent of the Secretary of the Treasury, or the Secretary of the Treasury may release such products without denaturing, under such conditions as may preclude the possibility of their use as food products.

Regulation 35. Bond, Imported Foods, and Drugs.

(Section 11.)

Unexamined packages of food and drug products may be delivered to the consignee prior to the completion of the examination to determine whether the same are adulterated or misbranded upon the execution of a penal bond by the consignee in the sum of the invoice value of such goods with the duty added, for the return of the goods to customs custody.

Regulation 36. Notification of Violation of the Law.

(Section 11.)

If the sample on analysis or examination be found not to comply with the law, the importer shall be notified of the nature of the violation, the time and place at which final action will be taken upon the question of the exclusion of the shipment, and that he may be present, and submit evidence (Form No. 5), which evidence, with a sample of the article, shall be forwarded to the Bureau of Chemistry at Washington, accompanied by the appropriate report card.

Regulation 37. Appeal to the Secretary of Agriculture and Remuneration.

(Section 11.)

All applications for relief from decisions arising under the execution of the law should be addressed to the Secretary of Agriculture, and all vouchers or accounts for remuneration for samples shall be filed with the chief of the inspection laboratory, who shall forward the same, with his recommendation, to the Department of Agriculture for action.

Regulation 38. Shipment beyond the jurisdiction of the United States.

(Section 11.)

The time allowed the importer for representations regarding the shipment may be extended at his request to permit him to secure such evidence as he desires, provided that this extension of time does not entail any expense to the Department of Agriculture. If at the expiration of this time, in view of the data secured in inspecting the sample and such evidence as may have been submitted by the manufacturers or importers, it appears that the shipment can not be legally imported into the United States, the Secretary of Agriculture shall request the Secretary of the Treasury to refuse to deliver the shipment in question to the consignee, and to require its reshipment beyond the jurisdiction of the United States.

Regulation 39. Application of Regulations.

These regulations shall not apply to domestic meat and meat food products which are prepared, transported, or sold in interstate or foreign commerce under the meat-inspection law and the regulations of the Secretary of Agriculture made thereunder.

Regulation 40. Alteration and Amendment of Regulations.

These regulations may be altered or amended at any time, without previous notice, with the concurrence of the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor.

The above rules and regulations are hereby adopted.

LESLIE M. SHAW,

Secretary of the Treasury.

JAMES WILSON,

Secretary of Agriculture.

VICTOR H. METCALF,

Secretary of Commerce and Labor.

WASHINGTON, D. C., *October 17, 1906.*

THE FOOD AND DRUGS ACT, JUNE 30, 1906.

AN ACT For preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to manufacture within any Territory or the District of Columbia any article of food or drug which is adulterated or misbranded, within the meaning of this Act; and any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not to exceed five hundred dollars or shall be sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court, and for each subsequent offense and conviction thereof shall be fined not less than one thousand dollars or sentenced to one year's imprisonment, or both such fine and imprisonment, in the discretion of the court.

SEC. 2. That the introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country of any article of food or drugs which is adulterated or misbranded, within the meaning of this Act, is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received, shall deliver, in original unbroken packages, for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this Act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor, and for such offense be fined not exceeding two hundred dollars for the first offense, and upon conviction for each subsequent offense not exceeding three hundred dollars or be imprisoned not exceeding one year, or both, in the discretion of the court: *Provided*, That no article shall be deemed misbranded or adulterated within the provisions of this Act when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if said article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this Act.

SEC. 3. That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale in the District of Columbia, or in any Territory of the United States, or which shall be offered for sale in unbroken packages in any State other than that in which they shall have been respectively manufactured or produced, or which shall be received from any foreign country, or intended for shipment to any foreign country, or which may be submitted for examination by the chief health, food, or drug officer of any State, Territory, or the District of Columbia, or at any domestic or foreign port through which such product is offered for interstate commerce, or for export or import between the United States and any foreign port or country.

SEC. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of

this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States district attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid.

SEC. 5. That it shall be the duty of each district attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided.

SEC. 6. That the term "drug," as used in this Act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

SEC. 7. That for the purposes of this Act an article shall be deemed to be adulterated:

In case of drugs:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation: *Provided*, That no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application

applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

SEC. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purposes of this Act an article shall also be deemed to be misbranded:

In case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein.

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further*, That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient

to disclose their trade formulas, except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding.

SEC. 9. That no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this Act.

SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this Act, the same shall be disposed of by destruction or sale, as the said court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction: *Provided, however,* That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, or the laws of any State, Territory, District, or insular possession, the court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States.

SEC. 11. The Secretary of the Treasury shall deliver to the Secretary of Agriculture, upon his request from time to time, samples of foods and drugs which are being imported into the United States or offered for import, giving notice thereof to the owner or consignee, who may appear before the Secretary of Agriculture, and have the right to introduce testimony, and if it appear from the examination of such samples that any article of food or drug offered to be imported into the United States is adulterated or misbranded within the meaning of this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into, or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, or is otherwise falsely labeled in any respect, the said article shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them

from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

SEC. 12. That the term "Territory" as used in this Act shall include the insular possessions of the United States. The word "person" as used in this Act shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

SEC. 13. That this Act shall be in force and effect from and after the first day of January, nineteen hundred and seven.

Approved, June 30, 1906.

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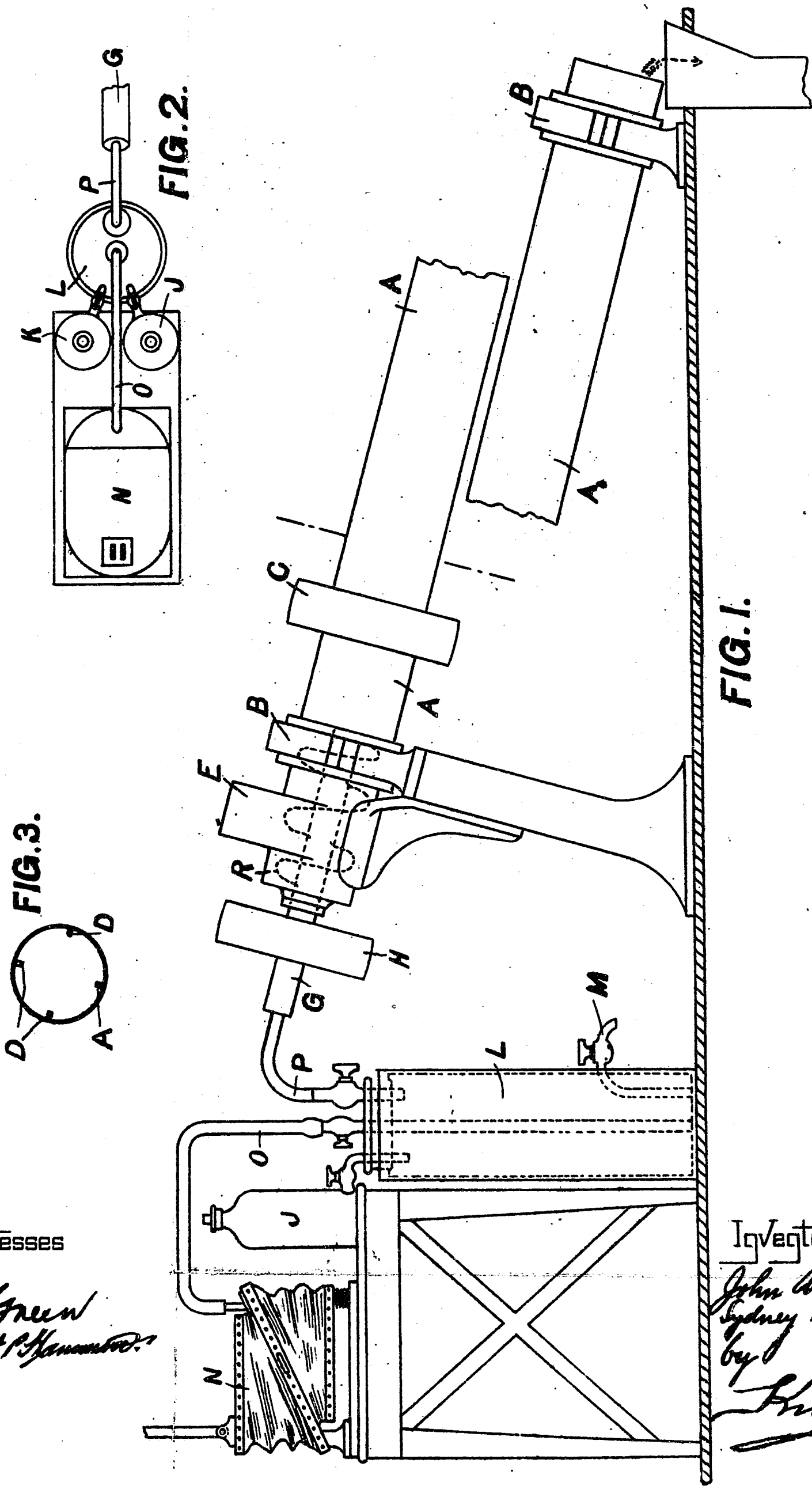
EXHIBIT A.

Filed January 25, 1909.

J. & S. ANDREWS.
PROCESS OF AGING AND BLEACHING FLOUR.

(Application filed Sept. 21, 1901.)

(No Model.)



Witnesses

J. Green
Att. P. Hammond

Inventors

John Andrews
Sydney Andrews
by *Freightman*
Att.

UNITED STATES PATENT OFFICE.

JOHN ANDREWS AND SYDNEY ANDREWS, OF BELFAST, IRELAND.

PROCESS OF AGING AND BLEACHING FLOUR.

SPECIFICATION forming part of Letters Patent No. 898,207, dated February 11, 1902.

Application filed September 21, 1901. Serial No. 76,038. (No specimens.)

To all whom it may concern:

Be it known that we, JOHN ANDREWS and SYDNEY ANDREWS, subjects of the King of Great Britain, residing at Belfast, in the county of Antrim, Ireland, have invented certain new and useful Improvements in Treating Flour, of which the following is a specification.

It has long been known that flour, semolina, and the like, hereinafter spoken of under the generic name of "flour," if kept for some time after grinding are greatly improved in quality. This improvement does not increase after a certain period, a deterioration then beginning.

Now our present invention is designed to bring about this improvement or conditioning immediately after grinding, without having to wait, as above stated, and, further, not merely to bring about an improvement equal to that caused by keeping it for a long period, but a much greater improvement.

The invention consists, essentially, in subjecting the flour to the action of a suitable gaseous oxidizing agent, whereby nascent oxygen or its equivalent is produced or comes in contact with the flour. A very small quantity of the oxidizing agent suffices, so little, indeed, that the actual composition of the flour, as shown by analysis, is hardly perceptibly altered. The plan we prefer is to pass the flour through various conveyers, whereby it is brought in contact with the gaseous oxidizing agent, and the drawings we herewith append show the apparatus which from long experience we have found to act best with air carrying a small quantity of gaseous peroxid of nitrogen, (N_2O_4). We do not, however, limit ourselves to the use of nitrogen peroxid, as we have found that chlorin, bromin, and other gaseous compounds capable of liberating oxygen will act with more or less efficiency. Besides the above reagents, ozone might be suggested; but we have found it is practically unworkable and its results unsatisfactory or *nil*, while it is more costly than peroxid of nitrogen, which we prefer to use. The difficulty, too, of generating it in a mill where electric sparking is especially dangerous puts it beyond the range of ordinary practice, and therefore in

speaking of "suitable oxidizing agents" we do not include ozone, though in some chemical processes it does act as an oxidizing agent on certain materials. Sulfuric and sulfurous acid have also been suggested for bleaching grain and for disinfecting warehouses, ships' holds, granaries, &c., which may contain flour. These two chemicals are, however, useless for flour, as they would spoil the taste without improving it, and we also disclaim the use of such.

In our practice any of the other oxidizing agents mentioned, but preferably peroxid of nitrogen, is caused to act upon the flour by forcing a current of air over or through the oxidizing agent employed, which current of air becomes impregnated with the oxidizing agent and is then brought in contact with the flour to be improved. With regard to the quantity, a very small amount of the oxidizing agent is sufficient.

We herewith append drawings of an apparatus which we have found most suitable for use with nitrogen peroxid, the cheapest and most preferable reagent.

Figure 1 is a front elevation of the apparatus; Fig. 2, a plan of part thereof; Fig. 3, a cross-section of the cylinder on the dotted line Y Z.

In the drawings, A is an inclined hollow cylinder mounted in bearings B and rotated by means of a pulley C. In the interior of this cylinder are longitudinal ribs D, which agitate the flour, inserted at E, while assisting its passage down the cylinder. Each rib in succession as it leaves the bottom during the rotation of the cylinder carries up a small amount of flour, which when it has risen to about three-fourths of the height drops through the air in the cylinder to the bottom again. The flour is conveyed into the interior of cylinder A through feed-hopper F, secured to the fixed worm-box G, inside which is a worm conveyer R, mounted on a hollow shaft H and rotated by a pulley I.

J is a jar or receptacle containing nitric acid, and K a similar receptacle containing ferrous sulfate dissolved in water. These are arranged to deliver a regulated supply of nitric acid and ferrous sulfate, respectively, into a glass or other vessel L, the liquid in which

is maintained at a constant level by a siphon-pipe M.

In a fifteen-sack-per-hour plant we use in practice commercial nitric acid, specific gravity 1.42, an eighty-ounce bottle; ferrous sulfate, two and one-fourth pounds, dissolved in about three pints of water, so as to make about eighty ounces. We now feed one of these into the other drop by drop and proportion it so that they will last about sixty hours. In our first experiments we used the nitric acid without the ferrous sulfate, and using commercial nitric acid and iron pipes we were enabled to get to some extent the same result as we now get with peroxid of nitrogen; but the iron pipes were soon corroded, and when we used earthenware instead of iron the effect was almost nil. Almost any material, however, that will withdraw one atom of oxygen from nitric acid can be used instead of ferrous sulfate; but we find that salt is very convenient and cheap.

In thus describing our invention we wish to point out that it is based upon the principle of exposing the flour to a material which will give out nascent oxygen in the pores of the flour, which nascent oxygen instantly attacks the coloring-matter of the flour. Ordinary oxygen passed through has not this effect, but only substances which, coming in contact with the flour, give out free oxygen to it, which had previously been in the combined state.

We declare that what we claim is—

1. The improvement in the process of aging and bleaching flour, which consists in passing the same in a state of fine division through an atmosphere containing a small regulated quantity of gaseous nitrogen peroxid. 35

2. The improved process of aging and bleaching flour which consists in bringing it into intimate contact with and uniformly exposing it to an atmosphere containing a small quantity of gaseous nitrogen peroxid, substantially as set forth. 40

3. The improvement in the process of aging and bleaching flour which consists in gradually supplying to nitric acid, a material capable of taking from it one atom of oxygen and bringing the resulting gas into intimate contact with the flour, substantially as described. 45 50

4. The improvement in the process of aging and bleaching flour, which consists in gradually adding nitric acid and ferrous sulfate together in solution, and bringing the gas which results therefrom into intimate contact with the flour, substantially as described. 55

In witness whereof we have hereunto signed our names, this 7th day of September, 1901, in the presence of two subscribing witnesses.

JOHN ANDREWS.
SYDNEY ANDREWS.

Witnesses:

SIDNEY W. DOD,
ALBERT C. B. HENRI.

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EXHIBIT B.

Filed January 25, 1909.

No. 759,651.

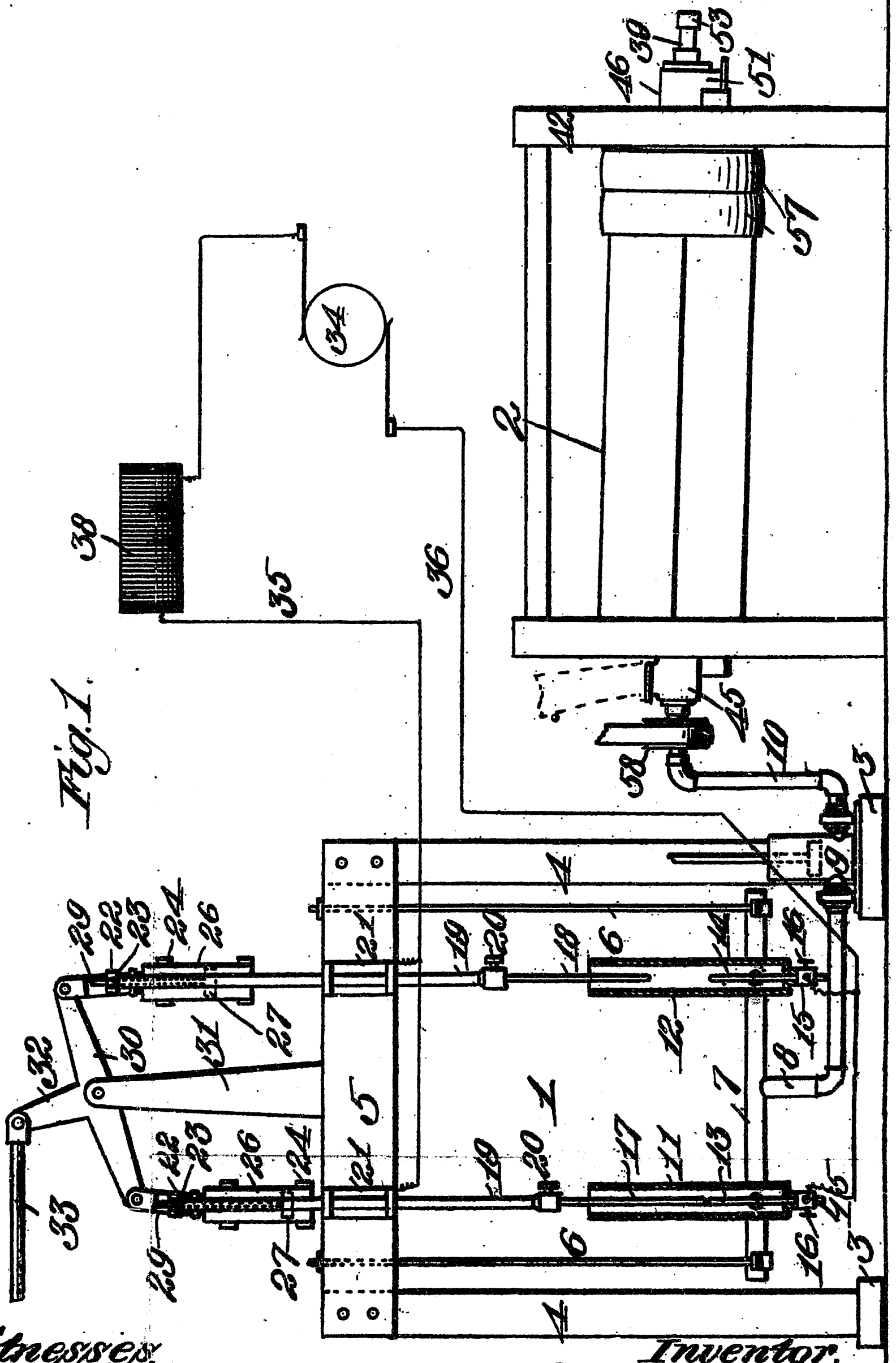
PATENTED MAY 10, 1904.

J. N. ALSOP.
PROCESS OF TREATING FLOUR.

APPLICATION FILED JUNE 2, 1903.

NO MODEL.

2 SHEETS—SHEET 1.



Witnesses:
Robert C. Smith.
James L. Morris, Jr.

Inventor.
James N. Alsop.
By James L. Morris, Jr.
Att'y.

No. 759,651.

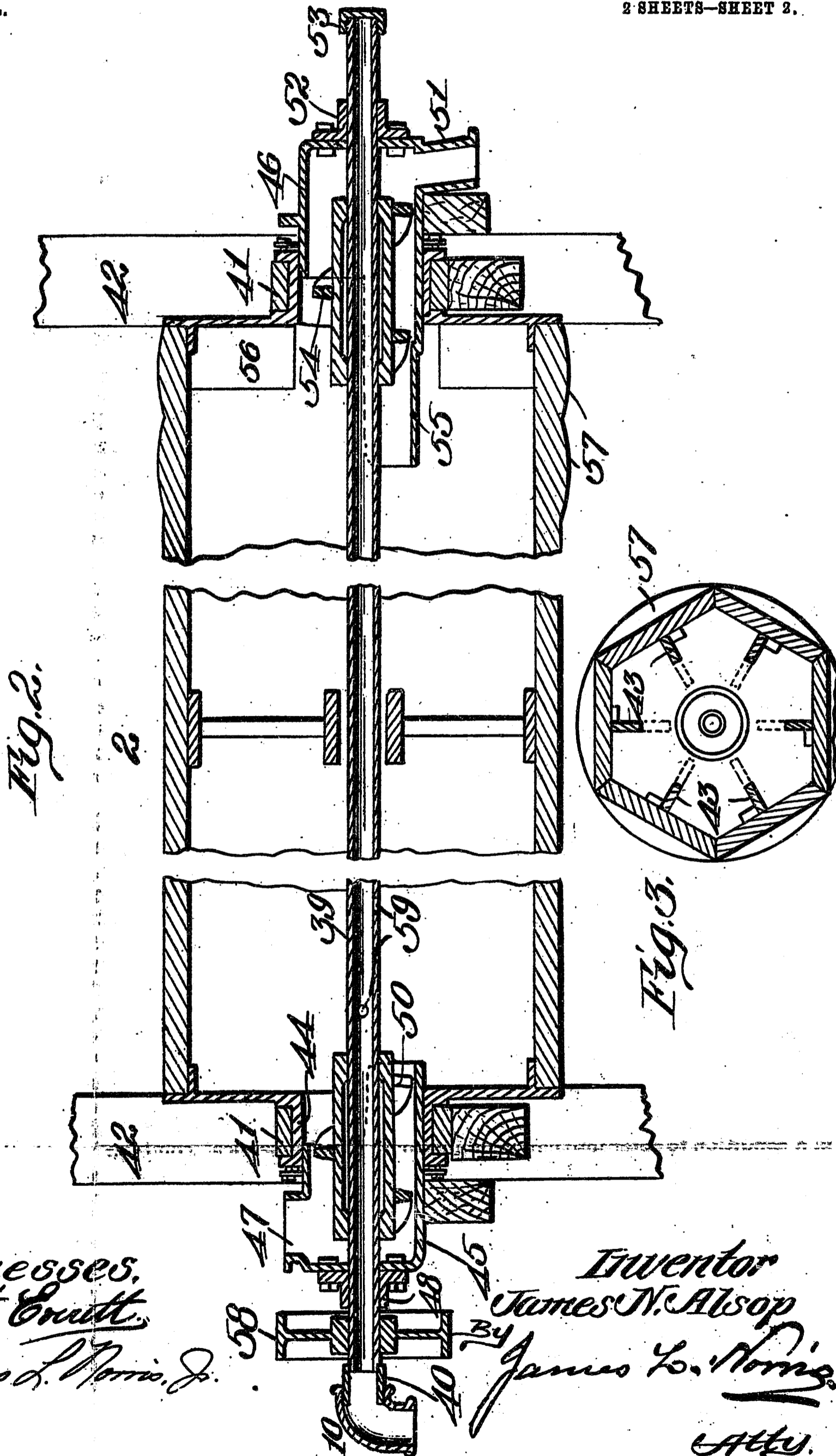
PATENTED MAY 10, 1904.

J. N. ALSOP.
PROCESS OF TREATING FLOUR.

APPLICATION FILED JUNE 2, 1903.

NO MODEL.

2 SHEETS—SHEET 2.



Witnesses.
Thos. Smith.
James L. Norris, Jr.

Inventor
James N. Alsop
James L. Norris
Attys.

No. 759,651.

Patented May 10, 1904.

UNITED STATES PATENT OFFICE.

JAMES N. ALSOP, OF OWENSBORO, KENTUCKY.

PROCESS OF TREATING FLOUR.

SPECIFICATION forming part of Letters Patent No. 759,651, dated May 10, 1904.

Application filed June 2, 1903. Serial No. 159,797. (No specimens.)

To all whom it may concern:

Be it known that I, JAMES N. ALSOP, a citizen of the United States, residing at Owensboro, in the county of Davis and State of Kentucky, have invented new and useful Improvements in Processes of Treating Flour, of which the following is a specification.

This invention relates to a novel process of treating flour to purify the same and increase the nutritive qualities thereof, and to this end resides, broadly, in subjecting flour to the action of a gaseous medium which will operate to bleach or purify the flour and cause a reduction of the quantity of the carbohydrate contents and an increase in the quantity of the protein contents thereof. The gaseous medium which I employ is atmospheric air which has been subjected to the action of an arc or flaming discharge of electricity. The resultant gas I have discovered, first by laboratory experimentation and then by actual practice on a commercial scale, to possess the property of causing a material decrease in the percentage of the carbohydrate contents of the flour subjected to its action and a practically corresponding increase in the proteids, thus greatly increasing the nutritive in contradistinction to the heat-giving qualities of the flour. I am not able to identify accurately by chemical formula this gaseous medium. It has been determined by chemical analysis, however, that air treated in the manner hereinafter described contains nitrogen peroxid (NO_2 or N_2O_4) and traces of ozone (O_3) and is in a state of ionization—that is to say, the air is separated into atoms or combinations of atoms, which are electrically charged, some negatively and some positively, and are thus in a condition to enter into new combinations.

In the art of milling it is a desideratum to manufacture flour which shall be white in color, and flour practically white in color has been produced; but so far as I am aware such whitening of the flour has never been effected without destroying to a large extent its nutritive qualities, or except by the use of acids or gases which make the flour subjected to the action thereof objectionable as a food product, owing to the deleterious qualities im-

parted to the flour by the bleaching agents employed.

I find in the practice of my process that flour subjected to the action of air which has been subjected to the flaming discharge of electricity will be bleached or purified, so as to render it white in color, and this bleaching or purification of flour is effected without destroying any of the nutritive qualities thereof, as shown by chemical analysis. I have also found that when portions of the treated and untreated flours, equal by weight, are blended with equal quantities of distilled water the two doughs thus formed are very different in consistency, that from the treated flour being apparently drier and much more elastic than that from the untreated flour, the dough from the latter being "short" and relatively non-elastic. When equal portions, by weight, of the two flours are blended with water sufficient to make a dough suitable for baking, it is found that the treated flour requires more water—from five to seven per cent. more. I also find that the treated and untreated flours from the same barrel when made into dough and baked will produce loaves of bread which upon being cut or broken show the same difference in color as was shown by the treated and untreated flours, the bread from the treated flour being much whiter.

I am unable to explain fully the reason for the change which is produced in the flour by treating it according to my process; but chemical analyses of the treated flour have demonstrated that it is largely due to the fact that there is a chemical combination of a relatively large amount of nitrogen or nitrogenous compounds with the flour. It is also believed that such chemical combination of the nitrogen with the flour is facilitated by producing a state of ionization of the air, and it is possible that the ionized air itself in some other way acts upon the flour to assist in producing the changes herein indicated. I will give the result of two chemical analyses of the flour, the first made to determine the extent and character of the change wrought in the constituents of the flour and the second made to determine the amounts of nitrogen which

the untreated and treated flour, respectively, contains. Two samples of flour were submitted for analysis to a professor of chemistry in Columbia College, Washington, District of Columbia. One of these samples was taken from a batch of flour before its treatment by my process and the other was taken from the same batch of flour after its treatment by my process. The untreated flour showed the following constituents in the proportions named: water, 9.84; starch, &c., 74.11; proteids, &c., 14.99; ash, 0.44; fat, 0.62. The flour which had been treated by my process showed the constituents in the following proportions: water, 10.13; starch, &c., 62.24; proteids, &c., 26.71; ash, 0.30; fat, 0.62. It will thus be seen that the flour which had been treated showed an increase of 11.72 parts of proteids and a decrease of 0.14 parts of ash and of 11.87 parts of starch. The increase in the proportion of proteids relative to that of the other constituents of the flour, especially of starch and ash, is a highly-advantageous result, as flour having such proportion of proteids is of course far more nutritive than the ordinary flour of commerce. As an incidental result of treating the flour by my process it is, as above stated, highly purified and whitened. The second analysis of the flour was conducted by the Henry professor of physics of Princeton University and his assistant professor, and it was found that while the untreated flour contained fifty-four one-thousandths of a gram of nitrogen per one gram of flour the treated flour contained seventy-five one-thousandths of a gram of nitrogen per one gram of flour.

In order that the invention may be clearly understood, I have illustrated in the accompanying drawings apparatus for carrying out the process.

In said drawings, Figure 1 is a view in elevation of a reel having combined therewith an apparatus for subjecting air to the disruptive discharge of electricity, parts of which latter apparatus are in section. Fig. 2 is a central longitudinal section, on a larger scale, of the reel; and Fig. 3 is a cross-section through the same.

Referring now to the drawings, 1 indicates the apparatus by means of which the air is subjected to the action of the electric arc or flame, and 2 indicates the reel in which the flour is treated by the gaseous medium produced in the apparatus 1. The said apparatus comprises a frame having base-blocks 3, uprights 4, and transverse supporting-beams 5, which latter support in any suitably manner, by means of rods 6, a conduit 7, closed at its end and connected centrally to a pipe 8, which in turn is operatively connected to an air-pump 9, having an education-pipe 10. Communicating with and extending upward from the conduit 7 are shown two tubes opened at

their upper end, said tubes being indicated, respectively, by the numerals 11 and 12. Extending upward through the lower end of each tube is an electrode, indicated, respectively, by the numerals 13 and 14, said electrodes being adjustably supported in holders 15 by means of set-screws 16. Extending downward through the upper end of each tube is a movable electrode, these electrodes being indicated, respectively, by the numerals 17 and 18. The electrodes 17 and 18 are supported in an automatically-adjustable manner. It may be here stated that the apparatus for subjecting air to the action of a flaming discharge of electricity forms the subject-matter of a separate application, filed May 29, 1903, Serial No. 159,383, and I have only shown the same herein conventionally or in its simplest form in order to illustrate the manner of carrying out the process forming the subject-matter of the present application.

19 indicates movable supports in the lower ends of which electrodes 17 and 18 are secured by means of binding-screws 20. Said supports are slidably mounted in guides 21, secured to the transverse frame members 5, and at their upper ends are adjustably secured in plates 22 by means of the binding-screws 23, said plates being of non-conducting material.

24 indicates a frame or cross-head which is adapted to have a vertical movement, said cross-head or frame 24 carrying at opposite sides cylinders 26, which are adapted to contain oil. Working in each of said cylinders is a piston 27, which is connected by a piston-rod to the plate 22.

29 indicates pitmen which are connected at their lower ends to the respective cross-heads 24 and at their upper ends are connected to opposite ends of the walking-beam 30, which is centrally and pivotally mounted on a support 31, rising from the frame of the machine. The walking-beam 30 is provided with a centrally-projecting arm 32, pivotally secured to which is a rod 33, by means of which the walking-beam is adapted to be rocked back and forth in the usual manner, the rod 33 being reciprocated by any suitable mechanical means—such as a crank, eccentric, or the like—which means need not be particularly referred to. It will be seen that as the walking-beam is operated one of the electrodes—say 17—will be moved downward, while the other, 18, will be moved upward.

The current for producing the arcs between the electrodes is supplied by a dynamo 34, from which lead wires 35 and 36. Beginning with the wire 36 said wire passes to the electrode 14 and then over to the electrode 13. The other wire of the dynamo leads to a coil 38 having high self-induction and then leads from said coil and is electrically connected to the movable electrodes 17 and 18.

The operation of this apparatus is as fol-

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lows: Assuming the parts to be in the positions shown in Fig. 1, the current is now passing through the electrodes 13 and 17. As the walking-beam 30 is operated to raise the electrode 17 an arc is formed between the electrodes 17 and 13, and the air contained within the tube surrounding these electrodes will be converted into a gaseous medium having the properties indicated. This gaseous medium is withdrawn from the tube by means of the action of the air-pump 9 and is delivered by said air-pump through the eduction-pipe 10 to the reel 2. As the electrode 17 continues to rise the electrode 18 will of course be correspondingly lowered, and the arc between the electrodes 17 and 13 will be maintained until the electrode 18 comes in contact with the electrode 14, when the current will be short-circuited through the latter electrodes and the arc between the electrodes 17 and 13 will be extinguished. The same operation will be repeated as the electrode 18 is raised, the arc being maintained until the electrodes 17 and 13 come in contact, or in the position in which they are shown in the drawings, when the current will be again short-circuited to the tube 11 and the arc between the electrodes 18 and 14 will be extinguished.

In treating air by this apparatus I am enabled to employ a current of very low potential. I have found, however, that with the low-potential current some means must be provided for feeding the arc, or, in other words, to meet the increased resistance offered as the electrodes are moved farther apart. This requirement I meet by the introduction into the circuit of the self-induction coil 38, the action of which is as follows: When either pair of the electrodes is brought together, thereby causing short-circuiting of the electrifying apparatus, the coil 38 is excited to a high degree of magnetism, and as the electrodes are pulled apart and are followed by the arc or flash, which increases the resistance of the circuit, the strength of the magnetism of the coil will be diminished. This change in the strength of the magnetism generates an extra current in the circuit or coil in the same direction as the original current and proportional in strength to the magnetic change, all as is well known. As the electrodes are drawn apart to form arcs the resistance of the circuit is additionally increased, causing the strength of magnetism in the coil to be additionally diminished, thereby causing the potential at the electrodes to rise to the necessary strength to meet the resistance of the air or gas between them, as the distance between the electrodes is increased until the opposite pair of electrodes are brought together and short-circuits said arcs. The contact of the electrodes lasts for an appreciable length of time, and the time during which the electrodes are in actual contact is sufficient to

enable the coil 38 to become thoroughly saturated with electricity. As a result when the electrodes are separated to draw off the arc the potential of the current is increased in the manner heretofore explained, and not only so, but the arc is fed with current and prevented from appreciable attenuation and maintained at a practically uniform density, which is the maximum density obtainable at the time. This may be further explained by stating that in practice the arc drawn off rarely exceeds four and one-half inches in length, whereas with a machine operating under the conditions herein described an arc eighteen inches can be drawn off before the arcing distance is passed. Thus it will be seen that I produce an arc, maintain the same at its maximum density and without appreciable attenuation, and short-circuit the arc while in this condition.

The amount of the gaseous medium produced in a given time will be in proportion to the number of amperes of electricity used, the potential at which it is passed through the apparatus, and the amount of air drawn through the tubes by the air-pump.

The eduction-pipe 10 from the pump 9 communicates with the interior of the reel through the medium of a pipe 39, which is journaled in the end of a coupling 40, screwed in the end of the pipe 10. The reel 2 as a whole is mounted at opposite ends in bearings 41; supported in a suitable manner in a frame 42.

In carrying my invention into effect I find it advantageous to subject the flour to the action of the gaseous medium within an airtight inclosure. For this purpose the reel 2, which, as shown, is preferably hexagonal in cross-section, is formed of wood or other suitable material and closed on all sides and at the ends except where the flour enters and leaves. Within the reel I provide a series of longitudinal ribs 43, which extend from end to end of the reel, said ribs projecting inwardly from the inner side of the reel and one of said ribs being provided for each side of the reel. These ribs are for the purpose of elevating the flour as the reel revolves and then discharging the same, so as the flour may be thoroughly brought into contact with the gaseous medium supplied from the apparatus 1. At each end of the reel a central cylindrical extension 44 is provided, which forms the journals of the reel, said extension being mounted in the bearings 41. Journaled within each extension 44 of the reel and suitably supported by the frame is a casing, said casings being denoted, respectively, by the numerals 45 and 46. The casing 45 communicates with the interior of the reel and is provided on its upper side with an opening 47, through which the flour is supplied to the reel. The outer end of the casing 45 is perforated to receive the pipe 39 and has further

secured to its end a bearing 48 for said pipe. Mounted on the pipe 39 in any suitable manner is a worm-conveyer 50, the length of which is about equal to that of the casing 45—that is to say, it projects slightly within the reel 2. The casing 46 is provided on its under side with a downward extension 51, which forms a pipe or chute to permit of the discharge of the flour from the reel. The pipe 39 extends throughout the length of the reel and through the outer end of the casing 46, which latter is provided on said outer end with a bearing 52 for the pipe. The outer end of the pipe 39 is closed by a cap 53. The casing 46 communicates with the interior of the reel, and within said casing is provided a worm-conveyer 54, which is mounted in any suitable manner upon the pipe 39. Supported on the inner end of the casing 46 and projecting a considerable distance into the reel 2 is a semicircular trough 55, open on its upper side, and within which trough a portion of the conveyer 54 revolves. At this end of the reel I provide extensions 56 of the ribs 43, said extensions projecting inward to within a short distance of the edge of the worm-conveyer and the purpose of these extensions being to lift the flour as the reel revolves and drop it into the trough 55, whereby the worm-conveyer 54 will draw it through the casing 46 and discharge it through the outlet 51. I also form the discharge end of the reel of a circular shape in cross-section, as indicated by the hatched portion at 57, whereby a belt or belts may be applied to the reel for the purpose of revolving it. At the opposite end of the reel the pipe 39 is provided with a pulley 58, whereby said pipe, with its worm-conveyers 51 and 54, may be revolved. The pipe 39 is provided at suitable intervals in the portion thereof within the reel with apertures 59, which are preferably spirally arranged around the pipe, these apertures being for the purpose of permitting the gaseous medium to be discharged into the interior of the reel.

In operation flour is applied to the reel through the opening 47 and is conveyed by the worm 50 to the interior of the reel, which, as shown, is arranged in an inclined position. At the same time the apparatus 1 is placed in operation and the pump 9 delivers the gaseous medium through the pipes 10 and 39 to the interior of the reel, and as said reel revolves the flour is constantly lifted up by and discharged off of the various ribs 43, whereby it is continuously agitated and brought into intimate contact with the gaseous medium discharged into the interior of the reel through the apertures 59. This continues as the flour passes from the inlet to the discharge end of the reel, and at said discharge end of the reel the extension-ribs 56 lift the flour and discharge it into the trough 55, and the conveyer 54 causes it to be discharged through the outlet 51.

While I have described the reel 2 as being air-tight, except for the inlet and discharge openings for the flour, I wish it understood that my process is not limited to treating flour in a closed or air-tight chamber or reel, but I may treat the flour according to my process in a reel provided with the ordinary bolting cloths or screens—that is to say, having sides of foraminous material.

In actual practice a large number of barrels of flour per day may be treated according to my process, and, in fact, the output of flour treated by my process is substantially only limited by the capacity of the mill, as my process does not to any material extent delay the output, the flour being passed continuously through the reel 2.

In practice I find that with the quantity of air drawn through the apparatus 1 being constant I can increase the effective working qualities of the gaseous medium by an increase in the amperage of the current. With a constant potential of five hundred volts I have used a current of from seven to ten amperes. The amperage of the current is of course regulated by increasing or decreasing the resistance of the induction-coil or by increasing or decreasing the voltage of the dynamo operating.

I have indicated the advantages derived from the use of my process, and it only remains to emphasize the fact that the flour treated by my process is improved in the particulars noted without having any of its qualities as a food product impaired; but, on the contrary, the result of the process is to greatly increase the value of the flour as a food product.

I have herein described my process as applied to the treatment of flour. I wish it understood, however, that said process may be applied to the treatment of the ground product of cereals other than wheat, and the term "flour" used in the claims is intended to have such generic application.

Having thus fully described my invention, what I claim as new is—

1. The process which consists in treating flour with a body of air as modified by the flaming electric discharge.
2. The process which consists in agitating flour and simultaneously treating the same with a body of air as modified by the flaming electric discharge.
3. The process of treating flour which consists in subjecting the same to the action of air which in turn has been subjected to the action of an intermittently-drawn-out electric arc.
4. The process of treating flour which consists in subjecting the same to the action of air which in turn has been subjected to the action of an electric discharge capable of ionizing the air and producing nitrogen-oxygen combinations therefrom.
5. The process of treating flour, which consists in subjecting air to contact with an interrupted flaming electric arc of high-current

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5

density and introducing air thus modified into the presence of the flour, for the purpose described.

5 6. The process of treating flour which consists in subjecting air to the action of an electric arc adapted to produce nitrogen-oxygen combinations therefrom and introducing the air thus modified into the presence of the flour in quantities sufficient to convert part of the
10 starch thereof into proteids.

7. The process of treating flour which consists in subjecting air to the action of an electric arc adapted to ionize the air and produce nitrogen-oxygen combinations therefrom and
15 introducing the air thus modified into the presence of the flour in quantities sufficient to convert part of the starch thereof into proteids.

8. The herein-described process which consists in subjecting a body of air to the action
20 of the flaming discharge of electricity, withdrawing the gaseous medium produced and introducing it in its electrified condition into the presence of flour for the purpose described.

9. The process of treating flour which consists in subjecting the same to the action of
25 air in a state of ionization.

10. The process of treating flour which con-

sists in subjecting the same to the action of nitrogen modified by the electric discharge in air.

11. The process of treating flour which consists in subjecting the same to the action of ionized nitrogen. 30

12. The process of treating flour which consists in subjecting the same to the action of
35 air which in turn has been so modified by electrical action that it is capable of increasing the nitrogen contents of flour.

13. The process which consists in effecting chemical changes in the composition of flour
40 by the action of a gas or gases in a condition of ionization.

14. The process which consists in effecting chemical changes in the composition of flour
45 by the action of a gas or gases in a condition of ionization produced by the electric discharge in air.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

JAMES N. ALSOP.

Witnesses:

F. B. KEEFER,
GEO. W. REA.

41

EXHIBIT C.

Filed January 25, 1909.

No. 758,884.

PATENTED MAY 3, 1904.

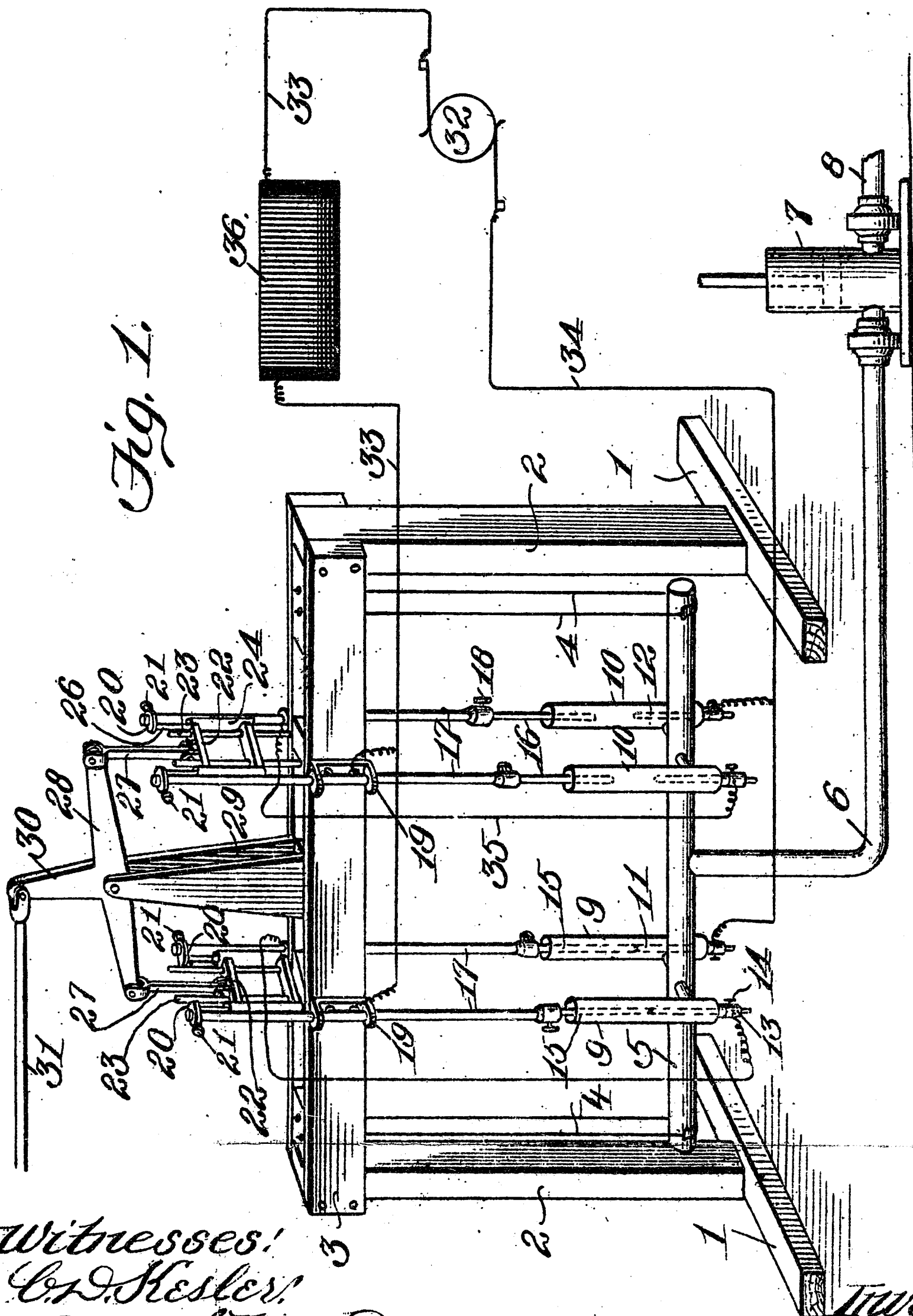
J. N. ALSOP.

APPARATUS FOR GENERATING GASEOUS MEDIUMS FROM AIR.

APPLICATION FILED MAY 29, 1903.

NO MODEL.

2 SHEETS—SHEET 1.



Witnesses:
 C. D. Kessler,
 James L. Norris, Jr.

Inventor
 James N. Alsop
 By James L. Norris,
 Atty.

44

No. 758,884.

PATENTED MAY 3, 1904.

J. N. ALSOP.

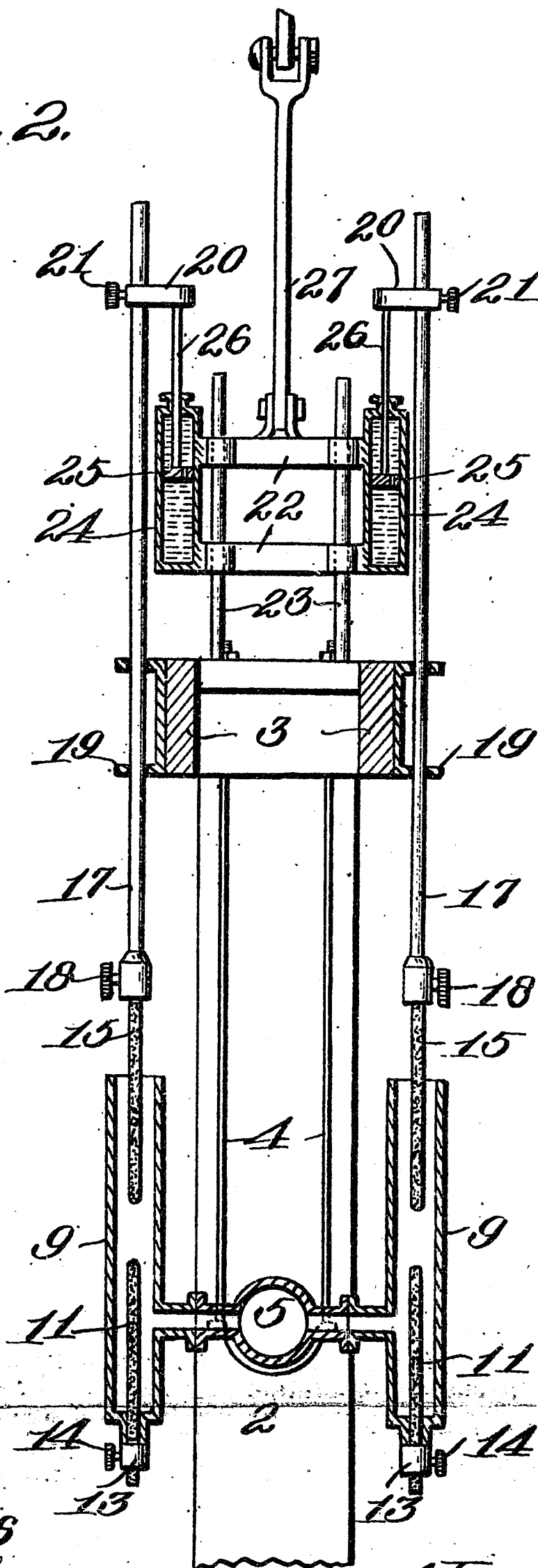
APPARATUS FOR GENERATING GASEOUS MEDIUMS FROM AIR.

APPLICATION FILED MAY 29, 1903.

NO MODEL.

2 SHEETS—SHEET 2.

Fig. 2.



Witnesses
C. D. Kessler
James L. Norris, Jr.

Inventor
James N. Alsop
By James L. Norris
Atty.

UNITED STATES PATENT OFFICE.

JAMES N. ALSOP, OF OWENSBORO, KENTUCKY.

APPARATUS FOR GENERATING GASEOUS MEDIUMS FROM AIR.

SPECIFICATION forming part of Letters Patent No. 758,884, dated May 3, 1904.

Application filed May 29, 1903. Serial No. 159,383. (No model.)

To all whom it may concern:

Be it known that I, JAMES N. ALSOP, a citizen of the United States, residing at Owensboro, in the county of Davis and State of Kentucky, have invented new and useful Improvements in Apparatus for Generating Gaseous Mediums from Air, of which the following is a specification.

My invention relates to an apparatus for generating a gaseous medium by means of an electric arc or flame.

The broad object of the invention is to provide an apparatus in which air may be subjected to the electric discharge to produce in large quantities for commercial use a gaseous medium which I have discovered possesses certain valuable properties. I am not able to identify accurately by chemical formula this gaseous medium. It has been determined by chemical analysis, however, that air treated in the manner hereinafter described contains nitrogen peroxid (NO_2 or N_2O_4) and traces of ozone (O_3) and is in a state of ionization.

A specific object of the invention resides in the interposition of a coil having high self-induction in the main circuit for raising the potential of the current to overcome the resistance produced when the electrodes are drawn apart to form the arc.

A further object of the invention is to provide a machine in which at one part the arc shall be formed by separating the electrodes and said arc be extinguished or dissipated by short-circuiting the current in another part of the machine, this latter operation being effected by bringing together two electrodes, which in turn are separated to form an arc, which in turn is dissipated by bringing together the first set of electrodes, the operation being continuous.

Other objects of the invention relate to details of construction and to combinations, operations, and arrangements of parts, all as hereinafter more particularly set forth, and specifically indicated in the claims appended hereto.

In order that my invention may be clearly understood, I have illustrated the same in the accompanying drawings, in which—

Figure 1 is a perspective view of an apparatus constructed according to my invention; and Fig. 2 is an enlarged transverse sectional view through one of the two sets of the generating apparatus shown in Fig. 1, certain parts being in elevation.

Referring now to the drawings, 1 indicates the base-blocks of a frame comprising uprights 2 and transverse supporting-beams 3, which latter support in any suitable manner by means of rods 4 a conduit 5, closed at its ends and connected centrally to a pipe 6, which in turn is operatively connected to an air-pump 7, having an eduction-pipe 8. Communicating with and extending upward from the conduit 5 on each side of the pipe 6 are a series of tubes opened at one end, in the arrangement shown two of such tubes being located at each side of the pipe 6 and indicated, respectively, by the numerals 9 10. Extending upward through the lower end of each tube is an electrode, (indicated, respectively, by the numerals 11 11 and 12 12,) said electrodes being adjustably supported in holders 13 by means of set-screws 14. Extending downward through the upper end of each tube is a movable electrode, these electrodes being indicated, respectively, by the numerals 15 15 and 16 16. The electrodes 15 16 are supported in an automatically-adjustable manner, as illustrated in Fig. 2, and in the manner now to be described.

17 indicates movable supports, in the lower ends of which the electrodes 15 16 are secured by means of binding-screws 18. Said supports are slidably mounted in guides 19, secured to the transverse frame members 3, and at their upper ends are adjustably secured in plates 20 by means of the binding-screws 21, said plates 20 being of non-conducting material.

22 indicates a frame or cross-head which is adapted to have a vertical movement on guide-rods 23, mounted in an upright position on the frame of the machine, said cross-head or frame 22 carrying at opposite sides cylinders 24, which are adapted to contain oil. Working in each of said cylinders is a piston 25, which is connected by a piston-rod 26 to the plate 20. The pistons 25 are each provided with small

holes to allow the oil to pass to the upper side of the pistons for a purpose hereinafter described.

27 27 indicate pitmen which are connected at their lower ends to the respective cross-heads 22 and at their upper ends are connected to opposite ends of a walking-beam 28, which is centrally and pivotally mounted on a support 29, rising from the frame of the machine. The walking-beam 28 is provided with a central projecting arm 30, pivotally secured to which is a rod 31, by means of which the walking-beam is adapted to be rocked back and forth in the usual manner, the rod 31 being reciprocated by any suitable mechanical means—such as a crank, eccentric, or the like—which means need not be particularly referred to.

It will be understood that the apparatus illustrated in Fig. 2 as applied to the tubes 9 9 is identical with the apparatus applied to the tubes 10 10, and from Fig. 1 it will be seen that as the walking-beam is operated one set of electrodes—say 15—will be moved downward, while the other set, 16, will be moved upward.

Referring now again to Fig. 2, it will be seen that in the downward movement of the pitman 27 the cylinders 24 will be carried downward, thus permitting the supports 17, which are carried by the piston-rods 26, to fall by gravity, this downward movement of the supports 17 being assisted by the partial vacuum which will be formed in the cylinders 24 in such downward movement. This continues until the electrodes 15 come in contact with the electrodes 11. As the pitman 27 is raised the pressure of the oil on the under side of the pistons 25 will also operate to raise the supports 17 and withdraw the electrodes 15 from the electrodes 11.

As in the operation of my apparatus I produce an arc or flame when the electrodes are drawn apart, it follows that said electrodes will burn away and become shorter, and unless some means were provided for compensating for this shortening of the electrodes they would soon fail to come in contact in the downward movement of the pitman 27, and hence the arc would not be formed.

It will be seen that I provide for automatically adjusting the fall of the electrodes 15 and 16 to compensate for the burning away by the construction above described, in which the electrodes are supported by the pistons 25 upon a body of oil in the cylinders 24. As each piston 25 is provided with a small hole, as the electrodes 15 and 16 shorten the pistons will settle farther down in the cylinders, the oil passing through the small opening therein to the upper side. The above construction not only provides for an automatic adjustment of the movable electrodes, but it also insures a yielding contact of the electrodes, with the consequent advantage that

breaking of the same in the act of contact is avoided. This latter feature would be of importance only in cases where carbon or other relatively soft electrodes were employed. In practice I employ metal electrodes, and hence the element of breakage has not to be considered.

The current for producing the arcs between the electrodes is supplied by a constant-potential dynamo 32, from which the current is led by wires 33 and 34. Each set of tubes 9 9 and 10 10, respectively, is connected up in series, and the wiring of the same from the dynamo will be readily understood and need be but briefly referred to.

Beginning with the wire 34, said wire passes to the electrode 12 of one of the tubes 10 and then over to the electrode 11 of one of the tubes 9. The stationary electrode 12 of the other tube 10 is electrically connected by a wire 35 to the movable electrode 16 of the first tube 10. The other wire, 33, from the dynamo leads to a self-induction coil 36 and then leads from said coil and is electrically connected to the movable electrodes 15 16 of the corresponding tubes 9 10. A wire 37 connects the stationary electrode 11 of this latter tube 9 with the movable electrode 15 of the other tube 9. Thus tracing the circuit through the set of tubes shown to the right of Fig. 1 and assuming that the electrodes 16 are in contact with the electrodes 12, the current passes from the dynamo 33 through the wire 34 to the electrode 12, to which said wire is connected, thence through the electrode 16 and its support 17 to the wire 35, thence to the electrode 12 of the other tube 10 and through the electrode 16 and support 17 to the wire 33, and thence through the coil 36 back to the dynamo. When the opposite electrodes 15 and 11 are brought together, the current will be short-circuited through these electrodes and pass in series therethrough, as just described with reference to the tubes 10.

The operation of the apparatus as thus far described is as follows: Assuming the parts to be in the positions shown in Fig. 1, the current is now passing through the respective electrodes 11 and 15. As the walking-beam 28 is operated to raise the electrodes 15 an arc is formed between the electrodes 15 and 11 and the gaseous medium will be generated in the tubes 9. This gaseous medium is withdrawn from said tubes by means of the action of the air-pump 7 and is delivered by said air-pump through the eduction-pipe 8 to the place of use or storage. As the electrodes 15 continue to rise the electrodes 16 will of course be correspondingly lowered and the arc between the electrodes 15 and 11 will be maintained until the electrodes 16 come in contact with the electrodes 12, when the currents will be short-circuited to the tubes 10 and the arc between the electrodes 15 and 11 will be extinguished. The same opera-

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tion will be repeated as the electrodes 16 are raised, the arc being maintained until the electrodes 15 and 11 come in contact or into the position in which they are shown in the drawings, when the current will be again short-circuited to the tubes 9 and the arcs between the electrodes 16 and 12 will be extinguished.

I can employ a current of very low potential for this purpose, as in the operation of my machine the electrodes are brought into actual contact and then drawn apart to draw out the arc, and the current does not have initially to span a given space with the necessity of thereby overcoming the great resistance to its passage formed by the air. I have found, however, that with a low-potential current some means must be provided for feeding the arc, or, in other words, to meet the increased resistance offered as the electrodes are moved farther apart. This requirement I meet by the introduction into the circuit of a coil having high self-induction, the action of which is as follows:

When either pair of electrodes in the tubes are brought together, thereby causing short-circuit of the electrifying apparatus, the coil 36 is excited to a high degree of magnetism, and as the electrodes are pulled apart and are followed by the arc or flash, which increases the resistance of the circuit, the strength of the magnetism of the coil will be diminished. This change in the strength of magnetism generates an extra current in the circuit or coil in the same direction as the original current and proportional in strength to the magnetic change, all as is well known. As the electrodes are drawn apart to form arcs the resistance of the circuit is additionally increased, causing the strength of magnetism in the coil to be additionally diminished, thereby causing the potential at the electrodes to rise to the necessary strength to meet the resistance of the air or gas between them as the distance between the electrodes is increased until the opposite pair of electrodes are brought together and short-circuits said arcs.

The principle of operation of the self-induction coil 36 will be seen to be that of inducing currents in the circuit, and by this means I am enabled to secure the potential necessary to overcome the resistance between the separated electrodes, and thus maintain the arc, while employing a dynamo generating currents of relatively low potential.

The amount of the gaseous medium generated in a given time will be in proportion to the number of amperes of electricity used, the potential at which the current is passed through the apparatus, and the amount of air drawn through the tubes by the air-pump.

While I have shown and described the tubes 9 and 10 as arranged in sets of two each, it will be obvious that I can employ any desired

number of tubes, beginning with one in each set. It will also be obvious that so far as certain features of the invention are concerned it will not be necessary to arrange the tubes in sets and operate the electrodes alternately, but that I could, for instance, employ a single tube and operate the same according to my invention. I prefer, however, to arrange the tubes in sets of two or more and operate the same alternately, for the reason that such operation affords greater rapidity in the production of the gaseous medium desired.

In practice I have used a dynamo designed to give out five amperes at five hundred volts and an induction-coil having an ohmic resistance of about one hundred ohms, said induction-coil comprising an iron core wound with No. 18 copper wire. With the particular form of apparatus herein described I have produced a gaseous medium of the character referred to with the voltage across the arc varying from one hundred and fifty volts to nine hundred volts and the current in the circuit of the arc varying from twenty amperes to one-tenth of an ampere. The particular limitations of voltage and current above referred to are by no means essential, since I have found that flour may be bleached and modified, as will hereinafter be described, with the voltage at the arc varying within the widest limits, and I believe that the same effects would be produced by the highest attainable voltage.

The valuable properties referred to as being possessed by the gaseous medium produced by this apparatus are those of whitening and purifying cereals and otherwise improving the quality thereof—that is to say, I have found that flour after being acted upon by the modified air—that is, air which has been acted upon by the spark or arc—is very noticeably bleached, presenting a dead-white color in contrast with the creamy yellow of the untreated flour. I have also found that when portions of the treated and untreated flours, equal by weight, are blended with equal quantities of distilled water the two doughs thus formed are very different in consistency, that from the treated flour being apparently drier and much more elastic than that from the untreated flour, the dough from the latter flour being “short” and relatively non-elastic. When equal portions, by weight, of the two flours are blended with water sufficient to make a dough suitable for baking, it is found that the treated flour requires more water—from five to seven per cent. more. I also find that the treated and untreated flours from the same barrel when made into dough and baked will produce loaves of bread which upon being cut or broken show the same difference in color as was shown by the treated and untreated flours, the bread from the treated flour being much whiter.

Having thus fully described my invention,

what I claim as new, and desire to secure by Letters Patent of the United States, is—

1. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means whereby one of said electrodes is reciprocated into and out of contact with the other to form arcs capable of modifying air in the manner indicated, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

2. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means whereby one of said electrodes is reciprocated into and out of contact with the other to form arcs, a casing surrounding said electrodes and having an air-inlet, and means for withdrawing the gaseous medium generated by the arcs from said casing.

3. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means for reciprocating one of said electrodes into and out of contact with the other to form arcs, means for short-circuiting the current at predetermined intervals to extinguish the arcs, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

4. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means for reciprocating one of said electrodes into and out of contact with the other to form arcs, means for short-circuiting the current at predetermined intervals to extinguish the arcs, a casing surrounding said electrodes and having an air-inlet, and means for withdrawing the gaseous medium generated by the arcs from said casing.

5. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means whereby one of said electrodes is reciprocated into and out of contact with the other to form arcs capable of modifying air in the manner indicated, a resistance interposed in the circuit with the electrodes, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

6. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means for continually moving one of said electrodes into and out of contact with the other to form arcs, a resistance interposed in the circuit of the electrodes, a casing surrounding said electrodes and having an air-inlet, and means for withdrawing the gaseous medium generated by the arcs from said casing.

7. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means whereby one of said electrodes is reciprocated into and out of contact with the other to form arcs ca-

pable of modifying air in the manner indicated, a coil interposed in the circuit of the electrodes, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

8. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means whereby one of said electrodes is reciprocated into and out of contact with the other to form arcs, a coil interposed in the circuit of the electrodes, a casing surrounding said electrodes and having an air-inlet, and means for withdrawing the gaseous medium generated by the arcs from said casing.

9. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means for reciprocating one of said electrodes into and out of contact with the other to form arcs, means for short-circuiting the current at predetermined intervals to extinguish the arcs, a resistance interposed in the circuit of the electrodes, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

10. In an apparatus of the character described, a pair of electrodes connected with a suitable source of electricity, means for reciprocating one of said electrodes into and out of contact with the other to form arcs, means for short-circuiting the current at predetermined intervals to extinguish the arcs, a resistance interposed in the circuit of the electrodes, a casing surrounding said electrodes and having an air-inlet, and means for withdrawing the gaseous medium generated by the arcs from said casing.

11. In an apparatus of the character described, in combination with a pair of casings having air-inlets, a pair of electrodes mounted in each casing, means whereby two of said electrodes located in the respective casings are reciprocated alternately into and out of contact with an opposite electrode to form arcs, said electrodes being connected with a source of electricity in such manner that the contact of one set will short-circuit the other, and means for withdrawing the gaseous medium generated by the arcs from said casing.

12. In an apparatus of the character described, in combination with a series of tubes, a series of electrodes mounted therein and connected to a suitable source of electricity, means whereby one set of electrodes is reciprocated into and out of contact with opposite electrodes to form arcs, and means for withdrawing the gaseous medium generated by said arcs from said tubes.

13. In an apparatus of the character described in combination with a series of electrodes mounted in sets connected up in series to a suitable source of electricity, means whereby one set of electrodes is reciprocated into and out of contact with opposite electrodes to

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form arcs, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

14. In an apparatus of the character described, in combination with a series of electrodes surrounded by casings and mounted in sets connected up in series to a suitable source of electricity, means whereby one set of electrodes is reciprocated into and out of contact with the opposite electrodes to form arcs, and means for withdrawing the gaseous medium generated by said arcs from said casings.

15. In an apparatus of the character described, in combination with a series of electrodes mounted in sets connected up in series to a suitable source of electricity, means for reciprocating one set of electrodes into and out of contact with opposite electrodes to form arcs, means for withdrawing from the region of the arcs the gaseous medium generated thereby, and means for short-circuiting the arcs.

16. In an apparatus of the character described, in combination with a series of tubes, a series of electrodes mounted therein and connected to a suitable source of electricity, means for reciprocating in alternation respective sets of electrodes into and out of contact with opposite electrodes to form arcs, and means for withdrawing the gaseous medium generated by said arcs from said tubes.

17. In an apparatus of the character described, in combination with a series of electrodes mounted in sets connected up in series to a suitable source of electricity, means for reciprocating in alternation respective sets of electrodes into and out of contact with opposite electrodes to form arcs, one set of electrodes when in contact being adapted to short-circuit the other set, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

18. In an apparatus of the character described, in combination with a series of electrodes surrounded by casings and mounted in sets connected up in series to a suitable source of electricity, means for reciprocating in alternation the respective sets of electrodes into and out of contact with opposite electrodes to form arcs, one set of electrodes when in contact being adapted to short-circuit the other set, and means for withdrawing the gaseous medium generated by said arcs from said casings.

19. In an apparatus of the character described, in combination with a pair of casings having air-inlets, a pair of electrodes mounted in each casing, means whereby two of said electrodes located in the respective casings are moved alternately into and out of contact with an opposite electrode to form arcs, said electrodes being connected with a source of electricity in such manner that the contact of one set will short-circuit the other, a self-induc-

tion coil interposed in the circuit of the electrodes, and means for withdrawing the gaseous medium generated by the arcs formed from said casings.

20. In an apparatus of the character described, a frame, a conduit supported thereby, an air-pipe leading from said conduit and connected with an air-pump, a series of tubes connected in sets to said conduit, stationary and movable electrodes mounted in said tubes and connected with a suitable source of electricity, means for alternately moving the movable electrodes of each set of tubes comprising a walking-beam mounted in the frame, a pitman connected to each end of the walking-beam, and means for supporting one or more of the movable electrodes, from each end of said pitman.

21. In an apparatus of the character described, in combination with a fixed electrode, a movable electrode, and means for supporting and permitting automatic adjustment of said movable electrode comprising a movable member, a cylinder carried thereby and adapted to contain a suitable fluid, a piston mounted in said cylinder, a piston-rod carried by said piston, means for supporting said electrode from said piston, and means for permitting the oil to pass from below the piston to the upper side thereof, to permit the piston to settle in said cylinder for the purpose described.

22. In an apparatus of the character described, two sets of electrodes, means for moving two of said electrodes, located in the respective sets, alternately into and out of contact with an opposite electrode to form arcs, said electrodes being connected with a source of electricity in such manner that the contact of one set will short-circuit the other set, and means for withdrawing from the region of the arcs the gaseous medium generated.

23. In an apparatus of the character described, a series of electrodes connected to a source of electricity, means for reciprocating in alternation respective sets of electrodes into and out of contact with opposite electrodes to form arcs capable of modifying air in the manner indicated, and means for withdrawing the gaseous medium generated from the arcs.

24. In combination with two electrodes, means for moving one of said electrodes relative to the other to form arcs, means for automatically adjusting one of said electrodes relative to the other, and means for withdrawing from the region of the arcs the gaseous medium generated thereby.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

JAMES N. ALSOP.

Witnesses:

F. B. KEEFER,
GEO. W. REA.

51

EXHIBIT D.

Filed January 25, 1909.

No. 758,883.

PATENTED MAY 3, 1904.

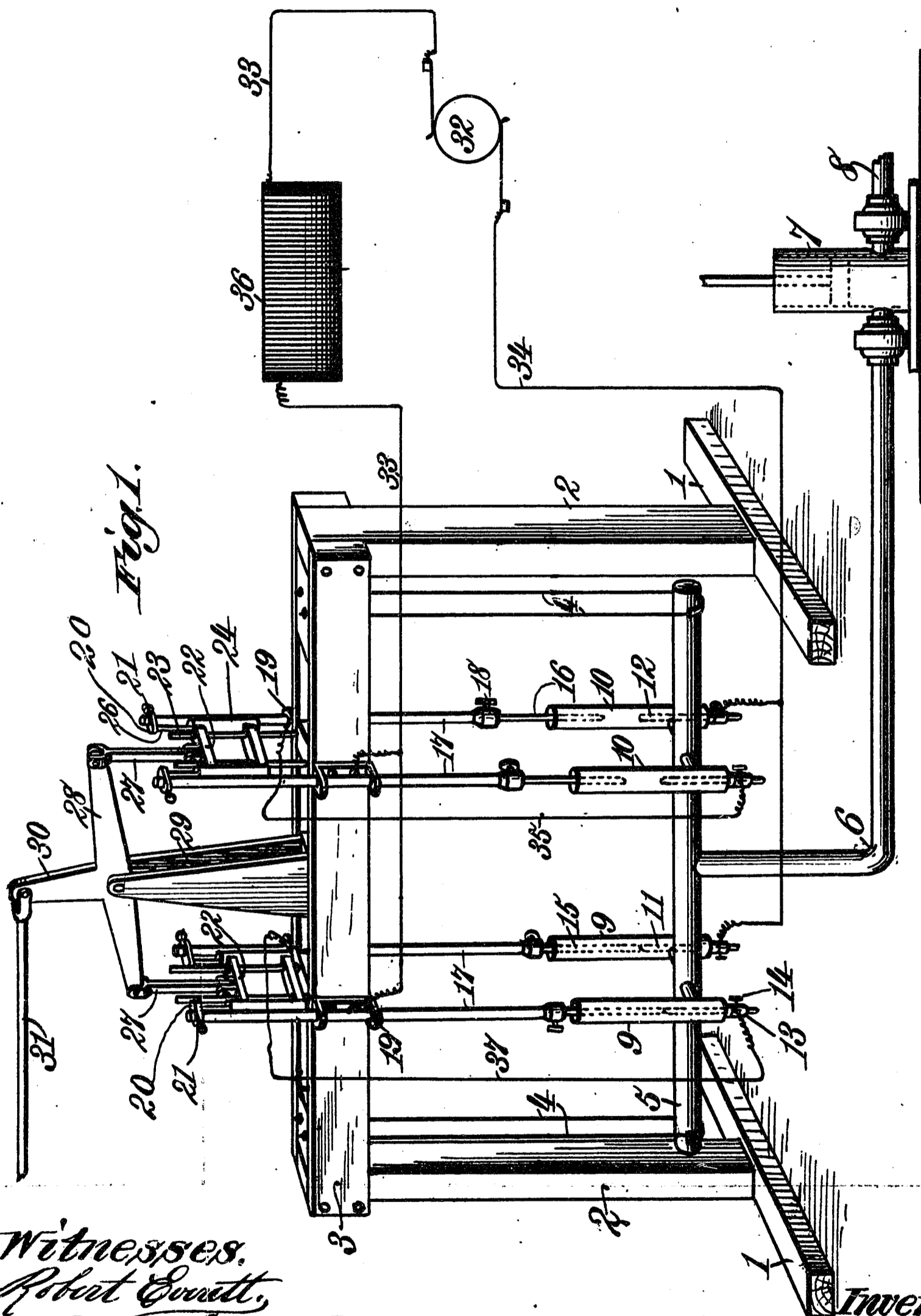
J. N. ALSOP.

METHOD OF GENERATING GASEOUS MEDIUMS FROM AIR.

APPLICATION FILED MAY 29, 1903.

NO MODEL.

2 SHEETS—SHEET 1.



Witnesses.
Robert Everett,
James L. Morris, Jr.

Inventor.
James N. Alsop.
By James L. Morris, Atty.

No. 758,883.

PATENTED MAY 3, 1904.

J. N. ALSOP.

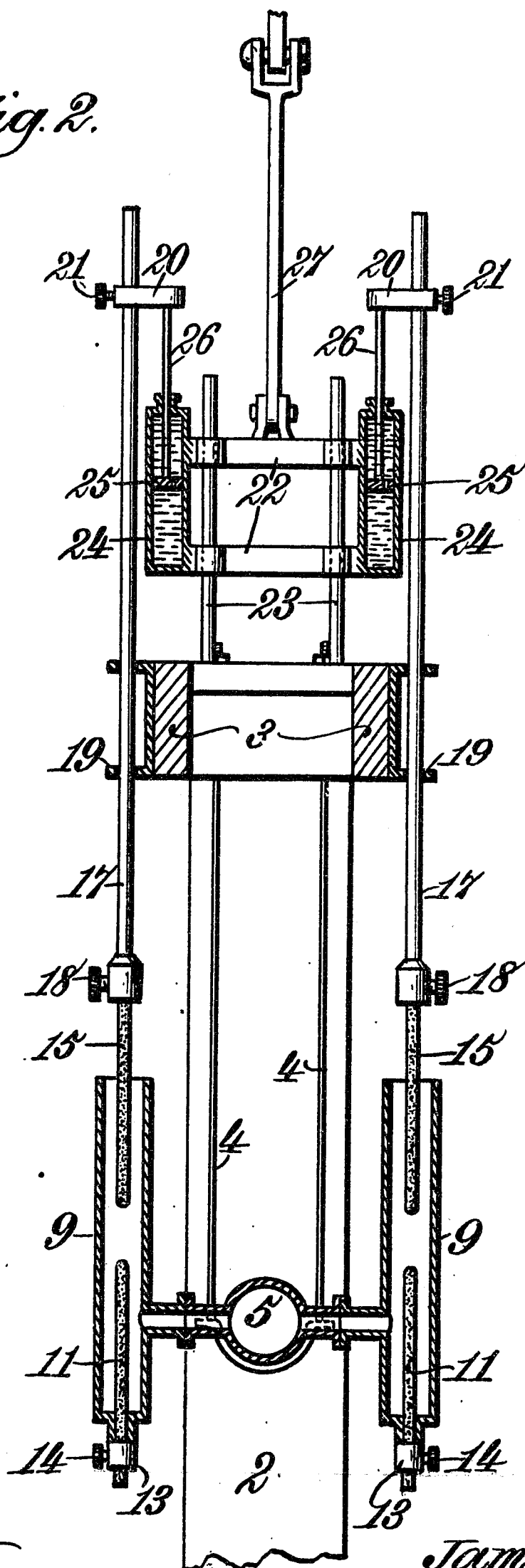
METHOD OF GENERATING GASEOUS MEDIUMS FROM AIR.

APPLICATION FILED MAY 29, 1903.

NO MODEL.

2 SHEETS—SHEET 2.

Fig. 2.



Witnesses:
Robert Everett,
James L. Morris.

13
Inventor,
James N. Alsop.
By James L. Norris.
Atty.

UNITED STATES PATENT OFFICE.

JAMES N. ALSOP, OF OWENSBORO, KENTUCKY.

METHOD OF GENERATING GASEOUS MEDIUMS FROM AIR.

SPECIFICATION forming part of Letters Patent No. 758,883, dated May 3, 1904.

Application filed May 29, 1903. Serial No. 159,382. (No specimens.)

To all whom it may concern:

Be it known that I, JAMES N. ALSOP, a citizen of the United States, residing at Owensboro, in the county of Davis and State of Kentucky, have invented new and useful Improvements in Methods of Generating Gaseous Mediums from Air, of which the following is a specification.

My invention relates to a method of generating a gaseous medium by means of an electric arc or flame for use in the treatment of flour, and has for its object a novel manner of continuously producing in succession a series of arcs, maintaining the same for a given period, and then dissipating them.

The invention has for a further object a novel manner of producing a gaseous medium by forming in the presence of air an arc or a series of arcs and in successively dissipating the respective arcs.

The invention has for a further object the production of a gaseous medium by forming an arc and in a novel manner increasing the potential of the current maintaining the arc. I am not able to identify accurately by chemical formula this gaseous medium. It has been determined by chemical analysis, however, that air treated in the manner hereinafter described contains nitrogen peroxid (NO_2 or N_2O_4) and traces of ozone (O_3) and is in a state of ionization. It is the aim of my invention to produce this gaseous medium, which I have discovered possesses certain valuable properties hereinafter referred to, in an economical manner in large quantities for commercial use, and I carry out the method forming the subject-matter of this invention by means of the apparatus illustrated in the accompanying drawings, in which—

Figure 1 is a perspective view of an apparatus constructed according to my invention; and Fig. 2 is an enlarged transverse sectional view through one of the two sets of the generating apparatus shown in Fig. 1, certain parts being in elevation.

Referring now to the drawings, 1 indicates the base-blocks of a frame comprising uprights 2 and transverse supporting-beams 3, which latter support in any suitable manner by means of rods 4 a conduit 5, closed at its

ends and connected centrally to a pipe 6, which in turn is operatively connected to an air-pump 7, having an eduction-pipe 8. Communicating with and extending upward from the conduit 5 on each side of the pipe 6 are a series of tubes opened at one end, in the arrangement shown two of such tubes being located at each side of the pipe 6 and indicated, respectively, by the numerals 9 and 10. Extending upward through the lower end of each tube is an electrode, (indicated, respectively, by the numerals 11 11 and 12 12,) said electrodes being adjustably supported in holders 13 by means of set-screws 14. Extending downward through the upper end of each tube is a movable electrode, these electrodes being indicated, respectively, by the numerals 15 15 and 16 16. The electrodes 15 16 are supported in an automatically-adjustable manner, as illustrated in Fig. 2, and in the manner now to be described.

17 indicates movable supports, in the lower ends of which the electrodes 15 16 are secured by means of binding-screws 18. Said supports are slidably mounted in guides 19, secured to the transverse frame members 3, and at their upper ends are adjustably secured in plates 20 by means of the binding-screws 21, said plates 20 being of non-conducting material.

22 indicates a frame or cross-head which is adapted to have a vertical movement on guide-rods 23, mounted in an upright position on the frame of the machine, said cross-head or frame 22 carrying at opposite sides cylinders 24, which are adapted to contain oil. Working in each of said cylinders is a piston 25, which is connected by a piston-rod 26 to the plate 20. The pistons 25 are each provided with small holes to allow the oil to pass to the upper side of the pistons for a purpose hereinafter described.

27 27 indicate pitmen which are connected at their lower ends to the respective cross-heads 22 and at their upper ends are connected to opposite ends of a walking-beam 28, which is centrally and pivotally mounted on a support 29, rising from the frame of the machine. The walking-beam 28 is provided with a central projecting arm 30, pivotally se

cured to which is a rod 31, by means of which the walking-beam is adapted to be rocked back and forth in the usual manner, the rod 31 being reciprocated by any suitable mechanical means—such as a crank, eccentric, or the like—which means need not be particularly referred to.

It will be understood that the apparatus illustrated in Fig. 2 as applied to the tubes 9 9 is identical with the apparatus applied to the tubes 10 10, and from Fig. 1 it will be seen that as the walking-beam is operated one set of electrodes—say 15—will be moved downward, while the other set, 16, will be moved upward.

Referring now again to Fig. 2, it will be seen that in the downward movement of the pitman 27 the cylinders 24 will be carried downward, thus permitting the supports 17, which are carried by the piston-rods 26, to fall by gravity, this downward movement of the supports 17 being assisted by the partial vacuum which will be formed in the cylinders 24 in such downward movement. This continues until the electrodes 15 come in contact with the electrodes 11. As the pitman 27 is raised the pressure of the oil on the under side of the pistons 25 will also operate to raise the supports 17 and withdraw the electrodes 15 from the electrodes 11. As in the operation of my apparatus I produce an arc or flame when the electrodes are drawn apart, it follows that said electrodes will burn away and become shorter, and unless some means were provided for compensating for this shortening of the electrodes they would soon fail to come in contact in the downward movement of the pitman 27, and hence the arc would not be formed. It will be seen that I provide for automatically adjusting the fall of the electrodes 15 and 16 to compensate for the burning away by the construction above described, in which the electrodes are supported by the pistons 25 upon a body of oil in the cylinders 24. As each piston 25 is provided with a small hole, as the electrodes 15 and 16 shorten the pistons will settle farther down in the cylinders, the oil passing through the small opening therein to the upper side. The above construction not only provides for an automatic adjustment of the movable electrodes, but it also insures a yielding contact of the electrodes, with the consequent advantage that breaking of the same in the act of contact is avoided. This latter feature would be of importance only in cases where carbon or other relatively soft electrodes were employed. In practice I employ metal electrodes, and hence the element of breakage has not to be considered.

The current for producing the arcs between the electrodes is supplied by a constant-potential dynamo 32, from which the current is led by wires 33 and 34. Each set of tubes 9 9 and 10 10 respectively, is connected up in

series, and the wiring of the same from the dynamo will be readily understood and need be but briefly referred to. Beginning with the wire 34, said wire passes to the electrode 12 of one of the tubes 10 and then over to the electrode 11 of one of the tubes 9. The stationary electrode 12 of the other tube 10 is electrically connected by a wire 35 to the movable electrode 16 of the first tube 10. The other wire, 33, from the dynamo leads to a coil 36 having high self-induction and then leads from said coil and is electrically connected to the movable electrodes 15 16 of the corresponding tubes 9 10. A wire 37 connects the stationary electrode 11 of this latter tube 9 with the movable electrode 15 of the other tube 9. Thus tracing the circuit through the set of tubes shown to the right of Fig. 1 and assuming that the electrodes 16 are in contact with the electrodes 12, the current passes from the dynamo 33 through the wire 34 to the electrode 12, to which said wire is connected, thence through the electrode 16 and its support 17 to the wires 35, thence to the electrode 12 of the other tube 10 and through the electrode 16 and support 17 to the wire 33, and thence through the induction-coil 36 back to the dynamo. When the opposite electrodes 15 and 11 are brought together, the current will be short-circuited through these electrodes and pass in series therethrough, as just described with reference to the tubes 10.

The operation of the apparatus as thus far described is as follows: Assuming the parts to be in the positions shown in Fig. 1, the current is now passing through the respective electrodes 11 and 15. As the walking-beam 28 is operated to raise the electrodes 15 an arc is formed between the electrodes 15 and 11 and the gaseous medium will be generated in the tubes 9. This gaseous medium is withdrawn from said tubes by means of the action of the air-pump 7 and is delivered by said air-pump through the eduction-pipe 8 to the place of use or storage. As the electrodes 15 continue to rise the electrodes 16 will of course be correspondingly lowered, and the arc between the electrodes 15 and 11 will be maintained until the electrodes 16 come in contact with the electrodes 12, when the current will be short-circuited to the tubes 10 and the arc between the electrodes 15 and 11 will be extinguished. The same operation will be repeated as the electrodes 16 are raised, the arc being maintained until the electrodes 15 and 11 come in contact or into the position in which they are shown in the drawings, when the current will be again short-circuited to the tubes 9 and the arcs between the electrodes 16 and 12 will be extinguished. I can employ a current of very low potential for this purpose, as in the operation of my machine the electrodes are brought into actual contact and then drawn apart to draw out the arc and the current does not have initially

to span a given space with the necessity of thereby overcoming the great resistance to its passage formed by the air. I have found, however, that with a low-potential current some means must be provided for feeding the arc, or, in other words, to meet the increased resistance offered as the electrodes are moved farther apart. This requirement I meet by the introduction into the circuit of a coil having high self-induction, the action of which is as follows: When either pair of the electrodes in the tubes are brought together, thereby causing short-circuit of the electrifying apparatus, the coil 36 is excited to a high degree of magnetism, and as the electrodes are pulled apart and are followed by the arc or flash, which increases the resistance of the circuit, the strength of the magnetism of the coil will be diminished. This change in the strength of magnetism generates an extra current in the circuit or coil in the same direction as the original current and proportional in strength to the magnetic change, all as is well known. As the electrodes are drawn apart to form arcs the resistance of the circuit is additionally increased, causing the strength of magnetism in the coil to be additionally diminished, thereby causing the potential at the electrodes to rise to the necessary strength to meet the resistance of the air or gas between them as the distance between the electrodes is increased until the opposite pair of electrodes are brought together and short-circuits said arcs.

The principle of operation of the self-induction coil 36 will be seen to be that of inducing currents in the circuit, and by this means I am enabled to secure the potential necessary to overcome the resistance between the separated electrodes, and thus maintain the arc, while employing a dynamo generating currents of relatively low potential.

The amount of the gaseous medium generated in a given time will be in proportion to the number of amperes of electricity used, the potential at which the current is passed through the apparatus, and the amount of air drawn through the tubes by the air-pump.

A distinguishing feature of my invention is the fact that the electrodes are brought into actual contact to start the arc. This contact lasts for an appreciable length of time, and the time during which the electrodes are in actual contact is sufficient to enable the coil 36 to become thoroughly saturated with electricity. As a result when the electrodes are separated to draw off the arc the potential of the current is increased in the manner heretofore explained, and not only so, but the arc is fed with current and prevented from appreciable attenuation and maintained at a practically uniform density, which is the maximum density obtainable at the time. This may be further explained by stating that in

practice the arc drawn off rarely exceeds four and one-half inches in length, whereas with a machine operating under the conditions herein described an arc eighteen inches long can be drawn off before the arcing distance is passed. Thus it will be seen that I produce an arc, maintain the same at its maximum density and without appreciable attenuation, and short-circuit the arc while in this condition.

While I have shown and described the tubes 9 and 10 as arranged in sets of two each, it will be obvious that I can employ any desired number of tubes, beginning with one in each set. It will also be obvious that so far as certain features of the invention are concerned it will not be necessary to arrange the tubes in sets and operate the electrodes alternately, but that I could, for instance, employ a single tube and operate the same according to my invention. I prefer, however, to arrange the tubes in sets of two or more and operate the same alternately, for the reason that such operation affords greater rapidity in the production of the gaseous medium desired.

In practice I have used a dynamo designed to give out five amperes at five hundred volts and an induction-coil having an ohmic resistance of about one hundred ohms, said induction-coil comprising an iron core wound with No. 18 copper wire. With the particular form of apparatus herein described I have produced a gaseous medium of the character referred to with the voltage across the arc varying from one hundred and fifty volts to nine hundred volts and the current in the circuit of the arc varying from twenty amperes to one-tenth of an ampere. The particular limitations of voltage and current above referred to are by no means essential, since I have found that flour may be bleached and modified, as will hereinafter be described, with the voltage at the arc varying within the widest limits, and I believe that the same effects would be produced by the highest attainable voltage.

The valuable properties referred to as being possessed by the gaseous medium produced by this apparatus are those of whitening and purifying cereals and otherwise improving the quality thereof—that is to say, I have found that flour after being acted upon by the modified air—that is, air which has been acted upon by the spark or arc—is very noticeably bleached, presenting a dead-white color in contrast with the creamy yellow of the untreated flour. I have also found that when portions of the treated and untreated flours, equal by weight, are blended with equal quantities of distilled water the two doughs thus formed are very different in consistency, that from the treated flour being apparently drier and much more elastic than that from the untreated flour, the dough from the latter flour being “short”

and relatively non-elastic. When equal portions, by weight, of the two flours are blended with water sufficient to make a dough suitable for baking, it is found that the treated flour requires more water, from five to seven per cent. more. I also find that the treated and untreated flours from the same barrel when made into dough and baked will produce loaves of bread which upon being cut or broken show the same difference in color as was shown by the treated and untreated flours, the bread from the treated flour being much whiter.

Having thus fully described my invention, what I claim as new, and desire to secure by Letters Patent of the United States, is—

1. The method, which consists in generating gases from air by continuously bringing in contact and separating in the presence of air, to form arcs, two electrodes connected with a source of electricity, and withdrawing from the region of the arcs the gaseous medium generated thereby.

2. The method of generating a gaseous medium from air, which consists in continuously bringing in contact and separating in the presence of air, to form arcs, two electrodes connected with a source of electricity, and then short-circuiting said arcs.

3. The method of generating a gaseous medium which consists in alternately bringing in contact and separating two sets of electrodes connected with a source of electricity, and short-circuiting the arc formed in each set by the contact of the electrodes of the other set.

4. The method of generating a gaseous medium from air which consists in bringing in contact in the presence of air two electrodes connected with a source of electricity, separating said electrodes to form an arc, and automatically increasing the potential of the current by such separation.

5. The method of generating a gaseous medium from air which consists in bringing in contact in the presence of air two electrodes connected with a source of electricity, separating said electrodes to form an arc, and simultaneously with the separation of the electrodes increasing the potential of the current.

6. The method of generating a gaseous medium from air which consists in alternately bringing in contact and separating in the presence of air two sets of electrodes connected with a source of electricity whereby a series of arcs is generated, and withdrawing from the region of the arcs the gaseous medium generated.

7. The method of generating a gaseous medium from air which consists in alternately bringing in contact and separating in the presence of air two sets of electrodes connected with a source of electricity, whereby a series

of arcs is generated, and short-circuiting such arcs at predetermined intervals.

8. The method of generating a gaseous medium from air, which consists in producing in a volume of air an electric arc, and continuously short-circuiting and reestablishing such arc.

9. The method of generating a gaseous medium from air, which consists in producing in a volume of air an electric arc, by bringing in contact and separating two electrodes connected with a source of electricity and continuously dissipating and reestablishing such arc, and automatically increasing the potential of the current coincident with the formation of the arc.

10. The method of generating a gaseous medium from air, which consists in continuously bringing in contact and separating in the presence of air, to form arcs of a given density, two electrodes connected with a source of electricity, and short-circuiting each arc while at its maximum density.

11. The method of generating a gaseous medium from air, which consists in continuously bringing in contact and separating in the presence of air, to form arcs, two electrodes connected with a source of electricity, maintaining the density of each arc without appreciable attenuation, and then short-circuiting said arc.

12. The method of generating a gaseous medium from air, which consists in continuously bringing into stationary contact and then separating in the presence of air, to form arcs, two electrodes connected with a source of electricity, increasing the potential of the current by the separation of the electrodes, and short-circuiting each arc before the density of the same is appreciably diminished.

13. The method of generating a gaseous medium from air, which consists in establishing in the presence of air an electric arc, maintaining said arc at a given density, and then short-circuiting it before the density of the same is appreciably diminished, and withdrawing from the region of the arc the air modified thereby.

14. The method of generating a gaseous medium from air, which consists in bringing in contact two electrodes connected with a source of electricity, separating said electrodes in the presence of air to form an arc, short-circuiting the arc while it is at its maximum density and withdrawing from the region of the arc the air modified thereby.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

JAMES N. ALSOP.

Witnesses:

F. B. KEEFER,
GEO. W. REA.

Filed January 25, 1909.

COMPLAINANTS' EXHIBIT "CONTRACT OF PURCHASE."

This agreement, made and entered into this 18th day of December, nineteen hundred and five, by and between the Andrews Flour Process Company, a corporation duly created and existing under the laws of the State of Illinois, and having its principal office at Alton, Illinois, party of the first part, and the Alsop Process Company, a corporation duly created and existing under the laws of the State of Missouri, and having its principal office at St. Louis, Missouri, party of the second part,

Witnesseth: Whereas, United States Letters Patent No. 693,207, dated February 11th, 1902, and No. 698,240, dated April 22nd, 1902, were granted to John and Sydney Andrews; and,

Whereas, said Letters Patent were thereafter duly assigned by said John and Sydney Andrews to the F-four Oxidizing Company, Limited, by certain instruments of assignment in writing recorded in the United States Patent Office, and,

Whereas, the said Flour Oxidizing Company, Limited, did thereafter on or about the 28th day of October, 1905, duly assign to the party of the first part by instrument in writing duly recorded in the United States Patent Office, the entire interest in said Letters Patent; and

Whereas, the party of the second part hereto is desirous of acquiring the entire interest in said Letters Patent, together with any and all rights, causes of action, claims or demands for damages or profits at law or in equity on account of any existing or past infringement of said Letters Patent or either of them.

Now, therefore, in consideration of the sum of one dollar in hand paid by said party of the second part, to the party of the first part, the receipt whereof is hereby acknowledged and confessed, and in

61 further consideration of the stipulations and agreements herein-
after expressed, the parties hereto have agreed and by these presents do agree, each for itself, its successors and assigns, as follows:

First. The party of the first part agrees within — days of the execution and delivery of this agreement for and in consideration of the purchase price of Three Hundred Thousand Dollars (\$300,000) to be paid to the party of the first part as hereinafter provided, upon payment by the party of the second part of the sum of Eighty Thousand Dollars (\$80,000) upon account thereof as hereinafter provided, to sell, assign, transfer and convey unto the party of the second part the entire interest in said United States Letters Patent No. 693,207, dated February 11th, 1902, and said United States Letters Patent No. 698,240, dated April 22nd, 1902, together with its whole right, title and interest in and to the inventions and improvements in said Letters Patent mentioned, but not in or for any

country other than the United States and its territories, and without guarantee or undertaking as to the scope or validity of said patents, and together with all the right, title and interest of the party of the first part in and to any right of extension or renewal, of said Letters Patent; and to that end to execute and deliver to the party of the second part a written assignment in such manner as will entitle the same to be recorded in the United States Patent Office and in substantial form as follows:

Whereas, United States Letters Patent No. 693,207, dated February 11th, 1902, and No. 698,240, dated April 22nd, 1902, were duly granted to John and Sydney Andrews, of Belfast, Ireland, for processes of ageing and bleaching flour as in said Letters Patent set forth; and,

Whereas, by virtue of instruments in writing duly executed by said John and Sydney Andrews, and recorded in the United States Patent Office, said John and Sydney Andrews did thereafter
62 assign to the Flour Oxidizing Company, Limited, a corporation of Liverpool, England, the entire interest in said Letters Patent and in and to any and all rights, causes of action and claims or demands for damage or profits at law or in equity on account of any then present or past infringement of said Letters Patent or either of them; and,

Whereas, the said Flour Oxidizing Company, Limited, did thereafter on or about the 28th day of October, 1905, by an instrument in writing duly executed and recorded in the United States Patent Office assign to the Andrews Flour Process Company, a corporation duly created and existing under the laws of the State of Illinois, and having its principal office at Alton, Illinois, the entire interest in said Letters Patent, together with any and all rights, causes of action and claims and demands for damages or profits at law or in equity on account of any then present or past infringement of said Letters Patent or either of them; and,

Whereas, said Andrews Flour Process Company is now the sole owner of said Letters Patent and of all rights under the same and of all rights and causes of action and claims and demands for damages or profits at law or in equity on account of any present or past infringement of said Letters Patent or either of them; and,

Whereas, the Alsop Process Company, a corporation duly created and existing under the laws of the State of Missouri, is desirous of acquiring the entire interest in said Letters Patent, together with said rights, causes of action and claims and demands:

Now, therefore, to all whom it may concern be it known that for and in consideration of the sum of one and more dollars to the said Andrews Flour Process Company in hand paid, the receipt of which is hereby acknowledged by it, the said Andrews Flour Process Company has sold, assigned and transferred and by these presents does
53 for itself, its successors and assigns, sell, assign and transfer unto the said Alsop Process Company, its successors and assigns, the entire interest in the United States Letters Patent above mentioned and described, together with its whole right, title and interest in and to the inventions and improvements in said Let-

ters Patent mentioned, but not in or for any country other than the United States, and together with all the right, title and interest the said Andrews Flour Process Company or its assigns may have in any right of extension or renewal of said Letters Patent or either of them, and also all rights and causes of action and claims and demands for damages or profits at law or in equity on account of any present or past infringement of said Letters patent or either of them; the same to be held and enjoyed by the said Alsop Process Company, for its own use and behoof and for the use and behoof of its legal representatives to the full end of the term for which said Letters Patent are or may be granted as fully and entirely as the same would have been held and enjoyed by said Andrews Flour Process Company had this agreement and sale not been made.

And the said Andrews Flour Process Company for itself, its successors and assigns does hereby covenant and agree to and with the said Alsop Process Company, its successors and assigns, that neither it nor any of its predecessors in ownership of said Letters Patent has given or granted any rights, permits, licenses or assignments thereunder or created any lien or incumbrance thereon; that at the time of the execution and delivery of these presents said Andrews Flour Process Company is the sole and lawful owner of said Letters Patent and has good right and lawful authority to sell and convey the same; that neither said Andrews Flour Process Company nor any of its predecessors in ownership of said Letters Patent has done any act to defeat or impair any rights, causes of action, claims or demands for damages or profits at law or in equity on account of any present or past infringement of said Letters Patent or either of them, 64 and that no judgment, decree or adjudication to defeat or impair the same has been rendered.

In witness whereof, the said Andrews Flour Process Company has caused these presents to be signed by its President and its corporate seal to be hereunto affixed the day and year first above mentioned.

Signed, sealed and delivered in the presence of

Second. Said party of the second part agrees upon the execution and delivery to it by the party of the first part of the said instrument of assignment as hereinbefore agreed conveying to said party of the second part all the rights, property, privileges and Letters Patent in the manner and to the effect as hereinbefore set forth to pay to the said party of the first part or its legally authorized representative for the use and behoof of the said party of the first part the sum of Eighty Thousand Dollars (\$80,000) in cash upon account of the aforesaid purchase price of Three Hundred Thousand Dollars (\$300,000).

And thereafter to pay the remaining Two Hundred and Twenty Thousand Dollars (\$220,000) of said purchase price as follows:

Until said sum shall be fully paid said party of the second part shall pay to the party of the first part ten per cent (10%) upon the gross proceeds and receipts of all sales made, licenses, permits or privileges granted or leases or rentals made by it of or for or in respect to any and all apparatus or process for ageing or bleaching flour, whether such apparatus or process be the same as that men-

tioned in the aforesaid Letters Patent or not, since the 29th day of November, 1905, to be applied by the party of the first part upon account of said Two Hundred and Twenty Thousand Dollars (\$220,000).

And to that end, it being understood that since said 29th day of November, 1905, the party of the second part has kept the
65 books of account hereinafter mentioned, said party of the second part shall continue from the execution hereof, to keep such books of account, in which shall be preserved a true record of all such sales, licenses, permits, privileges, rentals and leases with the gross prices, proceeds and receipts therefrom, and said ten per cent. shall be credited therein to the account of the said party of the first part from day to day as the drafts are paid and the checks or moneys received by said party of the second part for or on account of such proceeds and receipts. And the said party of the second part shall render unto the said party of the first part monthly statements showing each such sale, license, permit, privilege, rental and lease, each specified by a separate number, together with the terms thereof and the amount of the gross prices, proceeds and receipts received or to be received therefor, together with the cash from time to time received on account thereof and the amount of the ten per cent. (10%) of such proceeds and receipts agreed to be credited and paid to the party of the first part as hereinbefore provided; and at the end of every period of three months from and after the first day of January, 1906, and on or before the fifth day after the expiration of each such period of three months, said party of the second part will pay to said party of the first part the ten per cent. (10%) agreed to be credited and paid to it as aforesaid to the full extent that the same shall then remain due and unpaid. The first payment, to be made on or before April 5th, 1906, shall include the percentage on all such proceeds and receipts since said 29th day of November, 1905.

The party of the first part shall not be entitled to interest upon any of the moneys payable to it as aforesaid unless said party of the second part shall be in default in making payments as provided and
66 in such case the party of the first part shall be entitled to interest at the rate of six per cent. (6%) upon the payment so in default from the time the same became due and payable.

It is understood that all properly executed orders or contracts for or in respect to apparatus or processes received by the party of the second part at its office in St. Louis on or after the 29th day of November, 1905, shall come under the provisions hereof notwithstanding such orders or contracts may have been previously made or received by agents or others on behalf of the party of the second part.

Third. In the event that said party of the second part shall hereafter sell its business or Letters Patent, then said second party shall as a condition precedent to such sale, impose upon the purchaser or purchasers thereof the full assumption of the payment to said first party of any balance of the said Two Hundred and Twenty Thousand Dollars (\$220,000) that may on the date of said sale be un-

paid, and said purchasing party shall assume the payment of said balance and make the same in accordance with the terms of this agreement as hereinbefore set forth and required.

Fourth. The party of the first part shall if it so desires be permitted to have access to the books and records of the party of the second part from time to time to such extent as may be necessary to determine the amounts payable to it hereunder. The said first party hereby agrees that it will not divulge nor permit its examiner to divulge the business of said second party.

Fifth. It is understood between the parties hereto that said second party shall have the right for and during the period of one year from and after the 29th day of November, 1905, to make sales of apparatus or repairs to any customer or person who may have become a purchaser of any process or apparatus prior to November 29, 1905, which said process and apparatus are covered by Letters Patent
67 now held and owned by said second party; and upon all such sales so made during said period of one year, said second party shall not be required to make report or return to said first party or to pay the said ten per cent. (10%) of the gross amount thereof.

Sixth. It is further understood that the terms of this contract shall not apply to sales made on business done in any country other than the United States and the territories thereof, or on sales made for use in any country other than the United States and the territories thereof.

Seventh. The said first party hereby agrees to execute and deliver to said second party any other or further instruments of assignment than as herein set forth, which may at any time be necessary to completely vest said letters patent and rights in said second party according to the terms hereof.

Eighth. Each provision of this agreement shall be binding upon the successors and assigns of the party by which the provision is made and shall inure to the benefit of the successors and assigns of the other party.

In witness whereof, the parties hereto have caused this agreement to be executed in duplicate by their respective Presidents and their respective corporate seals to be hereunto affixed, attested by their respective Secretaries on the day and year first above written.

ANDREWS FLOUR PROCESS COMPANY,
By C. F. SPARKS, *As President.*

Attest:

C. A. CALDWELL, *Secretary.*

ALSOP PROCESS COMPANY,
By A. R. BYRD, *As President.*

Attest:

J. L. HINKLE, *Secretary.*

68

Rule to Show Cause.

Filed January 25, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51348.

UNITED STATES OF AMERICA *ex Relatione* ALSOP PROCESS Co.
vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

On consideration of the petition for a writ of mandamus filed herein on the 25th day of January 1909 it is by the court this 25th day of January 1909 ordered that the respondent show cause on or before the 12th day of February 1909 why the writ of mandamus should not issue as prayed, provided a copy of this order be served upon the defendant on or before the 30th day of January 1909.

HARRY M. CLABAUGH,
Chief Justice.

Marshal's Return.

Served copy of the within order on James Wilson, Secretary of Agriculture, personally.

Jan. 25, 1909.

AULICK PALMER, *Marshal.*
H.

69

Answer of Respondent to Rule to Show Cause.

Filed February 23, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51348.

UNITED STATES OF AMERICA *ex Rel.* ALSOP PROCESS COMPANY
vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

This respondent, James Wilson, Secretary of Agriculture of the United States, saving to himself all manner of exceptions to the want of jurisdiction in relator to file this petition because of the same appearing on the face of the petition, and all benefit of exception of the lack of jurisdiction of this Court to entertain the said petition or to grant the writ of mandamus therein prayed or to control the judgment and action of the said respondent in the matters complained of in the said petition which are vested by law under the control of your

respondent, and specifically pointing out and urging to the Court that it does not appear by the said petition that the said relator has any right title or interest in the matters affected by the judgment and action of your respondent referred to in the said petition, and is not a party to nor legally interested in the proceedings in which said judgment and action of your respondent have been made, and specifically pointing out and urging to the Court that your respondent is clothed by law with the power and the jurisdiction to decide the matters and questions complained of in the said petition and that his judgment and action in the premises are not thereafter subject to review, modification, reversal or affirmance by this Court, nevertheless for answer unto the said rule, or so much as respondent is advised is necessary to answer, says:

That he has no knowledge as to the averments of the incorporation of petitioner under the laws of the State of Missouri, and if the same be material calls for proof thereof. He admits that the relator is engaged in the manufacture of machinery which may be used to bleach flour, and in the sale of said machinery. He does not know whether the same is sold by relator in the different States of the Union or in the District of Columbia, and if the same be material calls for strict proof thereof. Respondent has no knowledge as to the extent to which the said machinery of relator has been adopted and used by millers in the United States, its territories and possessions, for the purpose of bleaching flour.

70 Respondent admits the averments of the said petition with respect to his incumbency and his authority as Secretary of Agriculture of the United States.

As to the averments of the said petition with respect to the alleged patenting of the Alsop Process for bleaching flour, and as to the exhibits A, B, C and D, filed with the said petition and relating to the said averments, respondent submits that the same import matters of law, and that he is not obliged to answer same. He is advised, however, and therefore avers that it is wholly immaterial to the question of the jurisdiction of the court to grant the writ of mandamus prayed for in this action that the idea or design of certain machinery may have been patented, which may be used, among other processes, for the purpose of bleaching flour. The same is wholly immaterial to, independent of, and in no wise legally connected with the right of your respondent to decide, in pursuance of the authority conferred on him by the provisions of the Food and Drugs Act approved June 30, 1906, that flour which is bleached by the use of nitrogen peroxide is deleterious and adulterated within the meaning of the said Act. Your respondent submits that the patenting of the said process confers no right on petitioner and gives him no status to seek of this Court this writ to compel the respondent to change or revoke his decision that the said flour so bleached as aforesaid is adulterated. Your respondent has not condemned the patent or the machinery of relator, but has condemned a certain flour which is not owned by relator and in which it has no interest.

Respondent is in no wise advised as to what expense re-
71 lator has incurred in advertising the said machinery or in introducing it to the trade, or to what extent the said ma-

chinery has been adopted by merchant flour millers throughout the United States, or as to what profit relator has derived from the sale of the said machinery, and submits that the same and each of the said averments are wholly immaterial and collateral to the question of the right of relator to seek this writ of mandamus or the Court to grant it, and your respondent respectfully suggests that by reason of said averments nothing has been shown to give this relator or this Court any jurisdiction in the premises to revoke or modify or restrain the judgment and action of your respondent in the premises.

With respect to the averments of the said petition that the Alsop Process of relator as employed by millers of the United States in the bleaching of flour is a harmless process, "being accomplished by the passage of pure air through a flaming discharge of electricity, and the application of the resultant gaseous medium to the freshly-ground flour as the latter passes through an agitator", as set out in the said petition, respondent says that the said averment is immaterial in that the said respondent has not assumed jurisdiction of nor decided the question of the harmlessness, *vel non*, of the machinery or the process of relator, and has no concern therewith, and respondent submits that the said averment, as the other averment in this behalf throughout the petition, must be disregarded by the Court and for naught held.

As to the averments that the flour as treated by the process of relator "has no substance mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength; that no valuable constituent of the flour has thereby been wholly or in part
72 abstracted; that the flour thus treated has not been mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed; that the flour thus treated does not contain any poisonous or other added deleterious ingredient which may render said flour injurious to health; that the flour thus treated does not consist in whole or in part of filthy, decomposed or putrid animal or vegetable substance or any portion of an animal unfit for food, whether manufactured or not, and that it is not the product of a diseased animal or one that has died otherwise than by slaughter"—as to these said averments, respondent says that most of the same are irrelevant and immaterial, but that the whole of same as pleaded are emphatically denied. Respondent says that the flour which is bleached is reduced and lowered in its quality and strength; that the said flour is so artificially colored as to conceal inferiority, and that it contains a poisonous and deleterious ingredient which has been added, and that the said flour is deleterious and injurious to health.

Respondent says that the bleaching of the said flour is effected by nitrogen peroxide, and that the resultant product is deleterious, and is adulterated within the meaning of the aforesaid Food and Drugs Act approved June thirtieth 1906; that the said respondent, after the most careful and exhaustive consideration, in the course of which a full hearing was accorded to all parties desiring to present any phases of the question, respondent in the sphere of his jurisdiction and within his discretion vested in him by the aforesaid

Food and Drugs Act approved June thirtieth, 1906, decided that the said flour so bleached is adulterated within the meaning of
73 the said Food and Drugs Act approved June thirtieth, 1906, and that the said respondent reached his decision and published the same heretofore, to-wit, on the ninth day of December, A. D. 1908. Respondent further represents to the Court that the averments of the petition in this behalf, as the other averments of the said petition, are irrelevant and immaterial, in that it is not a question in this case of what the machinery or process of relator may do or is capable of performing. The said machinery is in no wise before this Court, and was never before your respondent for his consideration, decision or action. Respondent has no concern with it nor with relator; but the question which was before respondent was that respecting whether bleached flour is adulterated within the meaning of the Food and Drugs Act approved June thirtieth, 1906. Respondent has decided, under the authority of the said Act, that the said bleached flour is so adulterated, and said relator has no legal status to assail or controvert this finding, and the Court, it is respectfully submitted, has no jurisdiction to review it. Respondent suggests that the fact he decided was that bleached flour is an adulterated product under the said Food and Drugs Act approved June thirtieth, 1906, and it is wholly irrelevant to the legality of that decision what may be the capacity, the potentiality or the character of the output of the machinery of relator.

Respondent admits the averments of the said petition with respect to the making of uniform rules and regulations by the Secretary of the Treasury, the Secretary of Commerce and Labor, and the respondent, under the provisions of the said Food and Drugs Act approved June thirtieth, 1906, to the end of carrying out its
74 provisions. Respondent also admits that prior to the eighteenth day of November, A. D. 1908, he caused to be inserted in certain milling journals and other periodicals a notice to the effect that a public hearing on the subject of bleached flour would be held at the Department of Agriculture in the City of Washington, District of Columbia, on November eighteenth, 1908, and that the said hearing was held, and was presided over by respondent and the Board of Food and Drug Inspection, and continued through five days, and that many parties were heard, arguing in favor of and against the bleaching of flour, and that testimony was adduced, and that the subject was thoroughly examined from all standpoints. Respondent further represents that for many months prior to November, 1908, he made an exhaustive inquiry into the character, composition and purity of bleached flour, and that he caused the matter to be investigated exhaustively by the Bureau of Chemistry of the Department of Agriculture, and that from all the evidence adduced it was conclusively established that flour bleached with nitrogen peroxide was adulterated within the meaning of said Food and Drugs Act approved June thirtieth, 1906. But in the exercise of abundant care and caution, the said respondent decided to renew the investigation of this subject, and to consider the matter more fully before finally deciding under the authority of the said Food and Drugs Act

approved June thirtieth, 1906, whether the said bleached flour was adulterated and whether it was prohibited within the provisions of the said Food and Drugs Act approved June thirtieth, 1906, and accordingly your respondent issued a notice to all parties interested

75 that a public hearing would be held in the Department of Agriculture in the City of Washington, District of Columbia, on the eighteenth day of November, 1908, when the matter would be publicly considered. The said hearing was entirely advisory to your said respondent, and the millers and manufacturers and others who attended did so voluntarily. By reason of said hearing, your respondent was put in possession of further and additional evidence relative to the subject and helpful to him in a thorough consideration of the same prior to his reaching a decision in his full discretion and judgment authorized by the said Act. The said hearing was authorized both impliedly by the provisions of the said Food and Drugs Act approved June thirtieth, 1906, which required your respondent to decide certain matters therein embodied and therefore authorized him to previously investigate such matters in such wise as he deems needful or proper, and expressly by the provisions of the Agricultural Appropriation Act of Congress approved May twenty-third, 1908, appropriating certain sums of money to defray the expenses of the conducting of investigations and of labor and expert work in that connection by the Bureau of Chemistry, Department of Agriculture, and for the purpose of collecting, digesting, reporting and illustrating the results of said investigations, and for the purpose of carrying into effect the provisions of the said Food and Drugs Act approved June thirtieth, 1906. After having considered the question of whether bleached flour is adulterated, and having notified all persons interested in the inquiry to attend said hearing and produce any evidence which might bear upon the subject, and after having gathered all evidence, information and other facts which would enlighten your respondent and enable him

76 to intelligently decide the same and to carry out the provisions of the said Food and Drugs Act approved June thirtieth, 1906, and after hearing the arguments of all parties interested, your respondent thereupon took the matter under consideration, and in his discretion and in the exercise of that judgment authorized and vouchsafed to him by the provisions of the said Food and Drugs Act approved June thirtieth, 1906, your respondent decided that flour bleached by the use of nitrogen peroxide is adulterated, within the meaning of the said Food and Drugs Act approved June thirtieth, 1906, and that the same is forbidden by the terms of the said Act, and thereupon your respondent announced and published the said decision, contained in F. I. D. 100, issued December tenth, 1908, and which is the same decision set out in pages five and six of said petition.

Respondent denies the averments of the said petition that the said hearing and the said decision are without right or color of law, and that the bulletin issued by your respondent publishing his said decision is without right or color of law. Your respondent says that the said publication of the said bulletin is authorized and required

by the aforesaid Appropriation Act of Congress approved May twenty-third, 1908, and authorized by the said Food and Drugs Act approved June thirtieth, 1906. Respondent further says that the said bulletin is a publication of useful information relating to matters placed by law under the control and in the care of your respondent as Secretary of Agriculture, and that the said bulletin in no wise mentions or relates to the said relator, and that it has not been legally damaged thereby, and has no status to seek of this Court, any relief or redress in connection therewith.

77 Your respondent denies in general the other averments of the petition that the finding and decision of your respondent that flour bleached by nitrogen peroxide is adulterated within the meaning of the said Food and Drugs Act approved June thirtieth, 1906, is an unjust, unauthorized, arbitrary and oppressive exercise of authority, and is without color or right of law, and is in disregard of the provisions of the said Food and Drugs Act approved June thirtieth, 1906, and the rules and regulations formulated and adopted thereunder. Respondent denies the same in toto, and further denies the interest of relator to assail the same and says that the relator has no right in this Court, and that he has not shown by said petition that he has been legally damaged or affected or reached by the said finding and decision of your respondent.

Generally and more fully answering the said petition, respondent says That by virtue of the provisions of the said Food and Drugs Act approved June thirtieth, 1906, your respondent, in conformity with the terms thereof and the rules and regulations formulated and adopted thereunder, is vested with the absolute authority to decide what constitutes adulteration within the meaning of the said Act, and upon deciding that the product is adulterated to certify the facts of such a violation of the Act to the proper United States attorney for such proceedings in law as the violation may demand. In order to reach his decision, your respondent is not only authorized, but in fact required, in the careful and conscientious discharge of his duty, to investigate the subject fully and to hear before he condemns. To that end he is directly authorized to hold

78 such hearings as to him may seem proper, and to seek information from all proper available sources. Your respondent is further authorized expressly to hold such hearings and to investigate the subject by the plain provisions of the Act of Congress approved May twenty-third, 1908. In pursuance of such authority, your respondent, has hereinbefore set out, did proceed to the consideration of whether flour bleached by the use of nitrogen peroxide is adulterated within the meaning of the said Food and Drugs Act approved June thirtieth, 1906, and prior to his decision on the said matter your respondent exhaustively investigated the whole subject, and held the hearings hereinbefore referred to, and examined other evidence and data therein mentioned, and thereafter, to-wit, on the tenth day of December, 1908, your respondent in the exercise of his authority and in his discretion and by the judgment, all provided for by the said Act of Congress approved June thirtieth, 1906, decided that flour bleached by the use of nitrogen peroxide

was adulterated within the meaning of the aforesaid Act of Congress approved June thirtieth, 1906, and that the character of the adulteration is such that no statement upon the label will bring the bleached flour within the laws, and that accordingly bleached flour is prohibited and contraband by the terms of the said Food and Drugs Act approved June thirtieth, 1906. In accordance with the provisions of law and the regulations prescribed under said Act, your respondent then published his finding. But inasmuch as the practice of bleaching flour had been adopted by many millers, your respondent desires to avoid as much loss as possible, to the parties interested which would be caused by an immediate prohibition of the sale of bleached flour, and desired to reduce the incon-

79 convenience of persons using said bleached flour resulting from respondent's decision to a minimum, and to this end respondent decided to postpone the time when he would report cases of the use of bleached flour for prosecution to the expiration of six months from the date of his said finding. This decision was made by your respondent in the exercise of extreme leniency and fairness, and in order to enable parties affected by his said decision to readjust their business in the ample time intervening before respondent's certification of cases of bleached flour for prosecution to the proper United States attorneys. By Section four of the said Food and Drugs Act approved June thirtieth, 1906, your respondent is required to certify the facts of any violation of the said Act to the proper United States attorney for proper proceedings, and it is this certification and notice to such United States attorneys which relator seeks to have your respondent forbidden to make. And respondent therefore suggests that the whole matter of deciding whether bleached flour is adulterated is vested by law in him, under the provisions of the said Food and Drugs Act approved June thirtieth, 1906; that his action and decision thereunder within his jurisdiction are complete and final; that such decision so made within his proper jurisdiction is the act of an executive and administrative branch of the government co-ordinate with the judiciary and wholly independent thereof, and that this Court has therefore no right or authority or jurisdiction to review his decision, to modify it or reverse it, or to nullify his decision and action by granting the writ of mandamus prayed for in the said petition nor to substitute its own judgment and oust the Secretary of Agriculture from
80 deciding whether bleached flour is adulterated, nor to constitute this Court a court of error and review of the decisions of the said Secretary of Agriculture.

And your respondent further represents that besides the total lack of fundamental jurisdiction in this Court to review the finding and the action of respondent in the premises, the relator is itself wholly without any legal status or legal interest to seek the remedy it prays. Your respondent has passed no judgment upon the machinery of the relator, and has no jurisdiction over the same, nor concern therewith. The said relator is not an owner of bleached flour nor a manufacturer of the same. The judgment of the said respondent has to do only with the bleached flour, the product itself,

and has no jurisdiction over or concern in one of the kinds of process by which the said product may be secured. And respondent submits that the claims of the said relator are wholly collateral, and that its petition fails to show any legal damage; and in the statement that the decision of the respondent that bleached flour is adulterated will injuriously affect the relator because thereby the manufacturers of bleached flour will cease to have need for the process of relator, it does not set out any legal claim of relator or give it any interest or legal status to seek of the Court a writ of mandamus to cancel the judgment of your respondent and to prevent him from carrying out the provisions of the said Food and Drugs Act approved June thirtieth, 1906.

And finally your respondent says there is no status whatever in the relator to seek, nor in the Court to grant the writ of mandamus compelling your respondent to withhold recommendation of prosecutions against persons dealing in bleached flour, who are in
81 no wise identical with or related to the relator. The request of the relator in this connection is a meddlesome intrusion, nor is there any status in relator to seek or in the Court to grant the writ of mandamus commanding the said Secretary of Agriculture to revoke and annul his said finding and decision.

And having fully answered your respondent therefore prays that the rule to show cause issued herein may be discharged, that the writ of mandamus prayed for may be denied, and that the petition may be dismissed at the cost of the relator.

JAMES WILSON.
DANIEL W. BAKER,
U. S. Att'y.
STUART McNAMARA,
Ass't U. S. Att'y.

DISTRICT OF COLUMBIA, ss:

James Wilson, Secretary of Agriculture of the United States of America; being first duly sworn, on oath says that he has read the foregoing answer to the rule to show cause by him subscribed, and knows the contents thereof; that the matters and facts therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

JAMES WILSON.

Sworn to and subscribed before me this 23rd day of February,
A. D. 1899.

[SEAL.]

JAMES E. JONES,
Notary Public, D. C.

Demurrer.

Filed March 3, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51348.

UNITED STATES OF AMERICA *ex Rel.* ALSOP PROCESS COMPANY
vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

The petitioner says that the answer filed by Respondent to the above entitled cause is bad in law, and constitutes no sufficient defense.

GEO. W. REA,
Att'y for Petitioner.

Note.

One matter to be argued on demurrer is that the Secretary of Agriculture is shown, by his answer, to have acted arbitrarily and oppressively, in that he did not proceed according to the Statutes.

One other matter to be argued on demurrer is that the answer of the Secretary of Agriculture shows no authority in law for holding the public hearing and publishing the decision complained of.

Opinion of the Court.

Filed April 30, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51348.

UNITED STATES OF AMERICA *ex Rel.* ALSOP PROCESS COMPANY
vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

This is a petition for a writ of mandamus. A rule to show cause was issued which the respondent has answered and to this answer the petitioner has demurred. The case was heard upon the demurrer and would have been disposed of at the time had it not been that the court understood that the parties desired that an opinion should be filed dealing fully with all the points involved. The case has been left undisposed of in the hope that opportunity would be found to prepare such an opinion, but the pressure of other duties having thus far prevented, and no likelihood appearing that the same can be done within the next few days, it is thought best to dispose of the case without answering categorically the numerous points made

in the brief of the petitioner. After all what the case amounts to is this. The Secretary of Agriculture has made up his mind that bleached flour is obnoxious to the provisions of the pure food act and has made that opinion public, announcing at the same
 84 time that after six months, during which time manufacturers and dealers will have an opportunity to adjust themselves to the situation, he will call upon the respective district attorneys to proceed against violators of the law. The petitioner claims to be the owner of a patent on the bleaching process and to be injured by the announcement of this opinion and intention. He is not the owner of any flour; he merely owns the patent and makes and sells the machinery. He says that the Secretary did not proceed according to the provisions of the pure food law in making up his mind; that he had no right to tell the public what opinion he had formed, nor what course he intended to pursue; that if he is going to recommend prosecutions at all he is bound to do so at once and not wait six months. He therefore asks this court, by the great writ of mandamus, to command the Secretary to vacate his decision, to take back what he has said, and hereafter to proceed strictly according to the law. The mere statement of the proposition seems to furnish its own answer and to render an elaborate opinion unnecessary. This court cannot change the fact that the Secretary entertains this opinion, nor the fact that he intends to call on the district attorneys to test the cases in the courts. It cannot command him not to make his opinion and intention known and if it could it would be useless for he has already made it known, and the petitioner itself is making the fact still more widely known by this proceeding. The merits of the real question, namely, whether flour subjected to the bleaching process may be sold without violating the pure food law, is one
 85 that will ultimately be determined by the courts. In the meantime the Secretary is not violating any law in having an opinion and in telling the public what it is.

The demurrer is overruled.

WENDELL P. STAFFORD, *Justice*.

Supreme Court of the District of Columbia.

FRIDAY, April 30, 1909.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

At Law. No. 51348.

UNITED STATES OF AMERICA *ex Relatione* ALSOP PROCESS COMPANY,
 Petitioner,

vs.

JAMES WILSON, Secretary of Agriculture, Respondent.

Upon consideration of the petitioner's demurrer to the respondent's answer to the rule to show cause herein, it is ordered that said

demurrer be, and it is hereby overruled; whereupon said petitioner now in open Court says that he will stand upon his said demurrer, it is ordered that judgment on said demurrer be entered.

Therefore it is considered that the rule to show cause herein
86 be, and the same is hereby discharged, the petition dismissed, and that the respondent recover against the petitioner, the costs of his defense, to be taxed by the Clerk, and have execution thereof.

From the foregoing the petitioner, by his Attorney in open Court, notes an appeal to the Court of Appeals of the District of Columbia, and, upon motion, the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars (\$100) or, in lieu thereof, a deposit of one hundred dollars (\$100).

Memorandum.

April 30, 1909.—\$100 deposited in lieu of appeal bond.

Directions to Clerk for Preparation of Transcript of Record.

Filed April 30, 1909.

In the Supreme Court of the District of Columbia, the 30 Day of April, 1909.

At Law. No. 51348.

UNITED STATES OF AMERICA *ex Rel.* ALSOP PROCESS CO.

vs.

JAMES WILSON, Sec'y of Agriculture.

87 The Clerk of said Court will please furnish transcript of the record for appeal to Court of Appeals, to include Petition Aff't & Exhibits; order to show cause; appearance answer; demurrer; order of court & opinion, appeal & memorandum of bond & designation.

GEO. W. REA,
Attorney for Petitioner.

88 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 87, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 51348 at Law, wherein United States of America *ex relatione* Alsop Process Company is Relator

and James Wilson, Secretary of Agriculture is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 4th day of May A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 2021. United States of America *ex relatione* Alsop Process Company, appellant, *vs.* James Wilson, Secretary of Agriculture. Court of Appeals, District of Columbia. Filed May 4, 1909: Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED
MAY 17 1919

Court of Appeals, District of Columbia.

APRIL TERM, 1909.

No. 2021.

No. 8, SPECIAL CALENDAR.

UNITED STATES OF AMERICA *Ex Relatione*
ALSOP PROCESS COMPANY, Appellant,

vs.

JAMES WILSON, Secretary of Agriculture.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF APPELLANT.

BRUCE S. ELLIOTT,
SAM B. JEFFRIES,
GEORGE W. REA,

Counsel for Appellant.

Court of Appeals, District of Columbia.

APRIL TERM, 1909.

No. 2021.

No. 8, SPECIAL CALENDAR.

UNITED STATES OF AMERICA *Ex Relatione*
ALSOP PROCESS COMPANY, Appellant,

vs.

JAMES WILSON, Secretary of Agriculture.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF APPELLANT.

*To the Honorable, the Judges of the Court of Appeals
of the District of Columbia.*

MAY IT PLEASE YOUR HONORS:

This case comes before this Court on appeal from the decision of his Honor, Mr. Justice Stafford, overruling the demurrer of the petitioner below to an answer of the Honorable James Wilson, Secretary of Agriculture, to a rule to show cause in a mandamus proceeding. The following are the facts:

STATEMENT OF FACTS.

I.

By an act entitled “An act for preventing the manufacture, sale or transportation of adulterated, misbranded, poisonous or deleterious foods, drugs, medicines and liquors, and for regulating traffic therein, and for other purposes”, and known as the Food and Drugs Act, June 30th, 1906, Congress enacted certain legislation prohibiting the manufacture of adulterated and misbranded foods or drugs within any territory of the United States or the District of Columbia, or the introduction of the same into interstate commerce; declared what articles should be considered adulterated within the meaning of the act; and charged the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor with the duty of making uniform rules and regulations for carrying out the provisions of the act, prescribing certain modes of procedure to be followed for determining violations of the act, and the duties of the officers of the Government in the premises. This act was approved June 30th, 1906, and Section 13 thereof enacted that said act should be in force and effect from and after the first day of January, nineteen hundred and seven.

II.

On November 18th, 1908, a public hearing on the subject of “Bleached Flour” was held before the Secretary of Agriculture and the Board of Food and Drug Inspection in the Agricultural Department at Washington, D. C. Notices that such hearing was to be held were inserted in various trade journals prior to the hearing,

and there were in attendance a number of millers from various parts of the United States. The hearing extended over part of five days, and thereafter the Secretary of Agriculture published an alleged decision which is known as "Food Inspection Decision 100." (Rec., p. 4.)

III.

The appellant thereupon filed with the clerk of the Supreme Court of the District of Columbia its petition for a writ of mandamus. (Rec., p. 1.)

IV.

An order to show cause, signed by his Honor, Mr. Chief Justice Clabaugh, was then served upon respondent, and in due course the latter filed his answer to the writ. (Rec., p. 64.)

V.

Thereupon the appellant demurred to the answer, and the demurrer was overruled. (Rec., p. 72.)

POINTS AND AUTHORITIES.

The appellant contends:

1. That the only hearing contemplated by the Act of Congress aforesaid, and provided for in the Rules and Regulations passed in pursuance thereof, is a private hearing.

Section 4 of the Act, and Regulation 5 of the Rules and Regulations.

2. That the only publication authorized by said Act, and by the Rules and Regulations passed in pursuance thereof, is publication after judgment of the Court.

Section 4 of the Act, and Regulation 6 of the Rules and Regulations.

3. That prior to any hearing there must be an examination of a specific sample, or samples; notice of the violation of the Act, together with a copy of the findings, must be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in the Act, and a date must be fixed at which such party, or parties, may be heard.

Section 4 of the Act, and Regulation 5 of the Rules and Regulations.

4. That aside from fixing a date of hearing the Secretary, in his actions complained of, failed to comply with the express provisions of Section 4 of the Act, and of Regulation 5 of the Rules and Regulations passed in pursuance thereof.

5. That there was no authority vested in the Secretary by the Act aforesaid to make any publication of

finding prior to a judgment of a court, and that such publication was made in violation of the express provisions of Regulation 6 of the Rules and Regulations for the enforcement of the Food and Drugs Act, June 30, 1906.

6. That compliance with the requirements of Section 4 of the Act and of Regulations 5 and 6 of the Rules and Regulations passed in pursuance thereof, must precede any recommendation of the Secretary of Agriculture for prosecutions under the Act.

7. That if it be a fact that flour bleached with peroxide of nitrogen is an adulterated product under the law, the Secretary of Agriculture was without authority of law, and himself violated the law, in officially permitting this unlawful product to be sold during a period of six months, and the said unlawful action should be vacated, and he be compelled to proceed according to law.

8. That all of the acts and doings aforesaid of the Secretary of Agriculture, as recited in respondent's answer, are shown by the answer to have been arbitrary and oppressive, and without right or color of law, and that the same should be annulled, vacated, and for naught held.

Garfield v. U. S. *ex rel.* Goldsby, 211 U. S. 249;
Payne v. U. S., 20 App. (D. C.) 581;
American School of Magnetic Healing v. McAnnulty, 187 U. S. 94.

9. That the Agricultural Appropriation Act of May 23, 1908, does not expressly, or by necessary implication, or at all, modify or repeal any of the sections of the Food and Drugs Act, June 30, 1906, and the said

Agricultural Appropriation Act of May 23, 1908, conferred no authority on the Secretary of Agriculture to hold the said hearing, nor to publish his said decision, nor to act otherwise than as provided by the said Food and Drugs Act, June 30, 1906, and the Rules and Regulations established thereunder. 4

10. That patents are property; and the owner of a patent is both legally and equitably entitled to the same protection for that property that the owner of any other species of property may enjoy; and he cannot be constitutionally deprived of that property without due process of law.

Walker on Patents, p. 138, Par. 151, and cases cited;

Cammeyer v. Newton, 94 U. S. 225.

11. That relator has a sufficient interest in the subject-matter involved to entitle it to institute this proceeding.

Van Horne v. State, 51 Neb. 231;

State v. Shropshire, 4 Neb. 411;

State *ex rel.* v. Kearney, 25 Neb. 266;

State *ex rel.* v. Public Schools, 134 Mo. 296;

Boylan v. Warren, 7 Amer. State Rep. 551;

State *ex rel.* v. Williams, 32 Amer. Rep. 19;

State v. Gracy, 11 Nevada, 223;

Glencoe v. People, 78 Ill. 382;

People v. Meakim, 56 Hun. 626;

Garrison v. Webb, 107 Ala. 499;

Lyon v. Rice, 41 Conn. 245;

State v. Davis, 54 Mo. App. 447;

{ Union Pacific R. R. Co. v. Hall, 91 U. S. 343; }
{ Board of Liquidation v. McComb, 92 U. S. 531 }

12. That the proper manner of procedure under the facts is by writ of mandamus.

State *ex rel.* v. Judge, 25 La. Ann. 149;
Baldwin v. Branch, 48 Mich. 525;
Jacobsin v. Hosmer, 76 Mich. 234;
State *ex rel.* v. Public Schools, 134 Mo. 296;
Garfield v. Goldsby, 211 U. S. 249;
Marbury v. Madison, 1 Cranch. 137;
Kentucky v. Dennison, 24 How. 66;
Kendall v. U. S., 12 Pet. 524;
United States v. Black, 128 U. S. 40 (case 993).

ARGUMENT.

I.

A brief explanation of the process under consideration may be helpful to the Court and is here inserted.

Explanation of Process: The Alsop Process has been in use approximately five years. This process is accomplished by forming flaming discharges of electricity, and continuously passing air through or in proximity to such electric discharges, and thence to an agitator through which the freshly-ground flour passes, and in which said flour is brought into intimate contact with the air which has been modified by the flaming electric discharge. The flour subjected to this modified air is slightly whitened in appearance, and is dried out to an appreciable extent. The air modified by the flaming electric discharge forms a gaseous medium which consists of about ninety-nine parts of pure air and one part of nitrogen peroxide. The presence of nitrogen peroxide is essential to effect the so-called bleaching of flour. While it is realized that the merits of the process, or the question of adulteration, are not at issue in this proceeding, it seems proper to state, as was done in the petition, our belief in the process, based on the highest scientific authority, as absolutely harmless and non-fraudulent, in order that the Court may not get the idea that this proceeding is one instituted merely for the purpose of delaying the inevitable as long as possible. On the contrary, we are entirely convinced that we can demonstrate to the satisfaction of any Court our contentions in this regard, and one of our chief causes

of grievance is the fact that while the respondent's decision has done as much harm to the business of appellant as though it had been an authorized finding, binding on all parties concerned, he at the same time left the appellant without recourse until such time as he might see fit to recommend prosecutions. The appellant contrary to the statements in the answer of respondent, is not only willing, but anxious to have its day in court. What the relator desires is to prevent the indiscriminate bringing of suits based on the unlawful decision of the Secretary, and to have the Secretary of Agriculture proceed according to law.

Hearing and Publication of Decision: The decision of the Secretary of Agriculture above referred to, holding that flour bleached by peroxide of nitrogen is an adulterated product under the Food and Drugs Act, June 30th, 1906, was reproduced in the trade journals and press of the country, and was given wide publicity. The millers generally throughout the country regarded this decision as a final and authoritative determination by the Department of Agriculture that the bleaching of flour was illegal, and as decisive of the question of their right to use the bleaching process. In consequence of this widespread belief that the bleaching process could no longer be legally practiced, the appellant was practically put out of business, so far as selling its processs and apparatus is concerned, and, further, a large and constantly increasing number of its customers have refused, and are refusing to pay sums of money legally due it basing their refusal on the ground that the use of the process sold to them had been prohibited by the Department.

The appellant denies the right of the Secretary of Agriculture or of the Board of Food and Drug Inspection, to hold public hearings in matters involving the question of the legality of an article of food, drug or confectionery arising under the said Food and Drugs Act, June 30th, 1906. A perusal of this Act, and of Regulations 5 and 6 of the Rules and Regulations for the enforcement thereof, make it perfectly manifest that the purpose had in view was to prevent the necessary investigations and inquiries respecting supposed violations of the law from working a hardship on an innocent manufacturer or dealer. This purpose is subserved by providing for a notification to the party or parties affected, who shall be given an opportunity to be heard, and this hearing must be **private** and confined to questions of fact. There is no provision in the law authorizing publication of the findings of the analyst or the Examiner prior to recommendation by the Secretary for prosecution.

II.

THE FOOD AND DRUGS ACT, JUNE 30, 1906.

Section 4. "That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act, and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that

any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States District Attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. After judgment of the court, notice shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid."

Regulation 5. Hearings. "(a) When the examination or analysis shows that the provisions of the food and drugs act, June 30th, 1906, have been violated, notice of that fact, together with a copy of the findings, shall be furnished to the party or parties from whom the sample was obtained or who executed the guaranty as provided in the food and drugs act, June 30th, 1906, and a date shall be fixed at which such party or parties may be heard before the Secretary of Agriculture, or such other official connected with the food and drugs inspection service as may be commissioned by him for that purpose. The hearings shall be had at a place to be designated by the Secretary of Agriculture, most convenient for all parties concerned. These hearings shall be private and confined to questions of fact. The parties interested therein may appear in person or by attorney and may propound proper interrogatories and submit oral or written evidence to show any fault or error in the findings of the analyst or examiner. The Secretary of Agriculture may order a re-examination of the sample or have new samples drawn for further examination.

(b) If the examination or analysis be found correct the Secretary of Agriculture shall give notice to the United States District Attorney as prescribed.

(c) Any health, food, or drug officer or agent of any State, Territory, or the District of Columbia who shall obtain satisfactory evidence of any violation of the food and drugs act, June 30th, 1906, as provided in section 5 thereof, shall first submit the same to the Secretary of Agriculture, in order that the latter may cause notice to be given to the guarantor or to the party from whom the sample was obtained."

Regulation 6. Publication. “(a) When a judgment of the Court shall have been rendered there may be a publication of the findings of the examiner or analyst, together with the findings of the court.

(b) This publication may be made in the form of circulars, notices, or bulletins, as the Secretary of Agriculture may direct, not less than thirty days after judgment.

(c) If an appeal be taken from the judgment of the court before such publication, notice of the appeal shall accompany the publication.”

Discussion. It will seem that section 4 provides for an examination of a sample, for notification to the party or parties from whom such sample was obtained, that such party or parties shall be given an opportunity to be heard, under such rules and regulations as may be prescribed, and if it appears that any of the provisions of the act have been violated by such party then the Secretary of Agriculture **shall at once** certify the facts to the proper United States District Attorney. This section also provides for notice to be given by publication **after judgment of the Court** before whom the proceedings were instituted in such manner as may be prescribed by the Rules and Regulations. Turning now to these Rules and Regulations we find that Regulation 5 based on Section 4, provides that the hearings authorized in said Section 4 **shall be private** and confined to questions of fact. No other hearing is provided for, either in the Act itself or by the Rules and Regulations.

Reading Regulation 6 we see that paragraph (a) provides for a publication “of the findings of the examiner or analyst”, together with the findings of the Court, after judgment of the Court shall have been rendered. Paragraph (b) provides that this publication shall be

made “not less than thirty days after judgment”; and paragraph (c) provides that if an appeal be taken from the judgment of the Court before publication, notice of the appeal shall accompany the publication.

We direct the attention of the Court to the fact that whereas Section 4 of the Act provides, in general terms, that “notice shall be given by publication in such manner”, etc., the three executive officers charged with the duty of making rules and regulations for carrying out the provisions of the Act, specifically provided in Regulation 6 for a publication **of the findings of the examiner or analyst**, together with the finding of the Court. The language of the statute is mandatory, “notice shall be given”, etc., while the language of Regulation 6 is permissive “there may be a publication”. This latter wording is possibly to be understood as meaning that in addition to the “notice” made mandatory by Section 4 of the Act, there might also be a publication of the findings of the examiner or analyst. Under any circumstances, however, the publication referred to by Regulation 6, and which is clearly the only publication provided for by the Act, or by the rules and regulations, at least in this connection, shall not occur until thirty days after judgment by the Court. We submit therefore, that the entire course of the Secretary of Agriculture was not only inconsistent with the spirit, but in plain violation of the terms of the Act and of the Rules of Regulations. Why should there be a private hearing? Clearly, to insure that no doubt should be aroused in the public mind as to the purity of a product if, as a result of the hearing, it was shown to be a legal product. Why should the Act and the Rules and Regulations provide for publication only

after judgment of the Court, and the regulations further provide that such publication should not be made until thirty days after judgment? Clearly, to avoid, as far as possible, publicity prior to judgment, having regard to the fact that the alleged violator of the Act might prove himself innocent in court and his product to be legal; and, further, in the event of an adverse decision, that he might have time to perfect an appeal, or to take some other course, with a view to having such decision reversed, and that the public might know, when it read of the decision that the question had not been finally determined, to the end that his business and property might not be destroyed before the erroneous findings of the Secretary had been finally reviewed in a judicial manner.

Thus, so far as could be done, the Act itself, and the Rules and Regulations made thereunder, safeguarded the interests of the manufacturer and dealer in food stuffs. In contrast to the benign provisions of the Act, and of the Rules and Regulations for the enforcement thereof, appears the action of the Secretary of Agriculture, which has resulted in casting doubt and suspicion upon the integrity of an alleged perfectly legitimate product, and in temporarily rendering valueless the interests of the appellant, while it yet remains to be judicially determined if flour bleached by peroxide of nitrogen is an adulterated product under the provisions of the said Act.

III.

APPELLANT'S PATENT RIGHTS.

The process of bleaching flour by peroxide of nitrogen is a patented process and, as recited in the petition, the patent therefor is owned by this appellant,

the purchase price therefor, as shown by Exhibit E (Rec., p. 59), being several hundred thousand dollars. This patent is known as the Andrews Patent, and is number 693,207. (Rec., p. 27.) It is a basic patent and its validity has been sustained by the United States District Court for the District of Nebraska, and, on appeal, by the Circuit Court of Appeals, Eighth Circuit. Other patents covering an electrical process for carrying out the process of the Andrews patent, and patents for the method and apparatus involved in this process, are also owned by the appellant, and copies of all of these patents, together with a copy of the contract of purchase of the Andrews patents are attached as exhibits to the petition. Perhaps two-thirds of all the mills in the United States are equipped with the Alsop or electrical process for bleaching flour, and it is substantially true that peroxide of nitrogen is the only agent used for bleaching flour and, as stated above, the use of this medium for this purpose is absolutely owned and controlled by the appellant.

The answer of respondent denies the right of appellant to ask for a writ of mandamus in this case, alleging that it is not legally interested in, or in any way affected by, the decision of the Secretary of Agriculture. But inasmuch as said decision holds that flour bleached with peroxide of nitrogen is an adulterated product, and inasmuch as appellant's patent covers the process of bleaching flour with peroxide of nitrogen, we conceive that if appellant had been the sole party concerned in the hearing before the Secretary, no decision could have been worded in a manner to more directly affect its interests and property rights. If it be a fact that flour bleached with peroxide of nitrogen is an adulterated

product, all of appellant's valuable patent rights become absolutely worthless. This is too plain to require argument. As a matter of fact, the Alsop Process Company is unable to do business today because of the said decision of the Secretary of Agriculture.

We contend and assert that the decision of the Secretary of Agriculture not only constitutes a libel against appellant's patents, but in effect renders said patents worthless, and that no authority exists in the Secretary of Agriculture to thus cast aspersion upon and destroy valuable property rights. The patents referred to were duly granted by the United States Government, were purchased in good faith by appellant, and carry with them a legal presumption of validity and utility.

Walker on Patents, p. 76, par. 85, and page 390, par. 491, and cases cited.

The appellant assumed, and had a right to assume, the good faith of the Government in granting said patents, and it paid valuable consideration for the rights guaranteed by said patents. It assumed, and had the right to assume, that until said patents were invalidated by a court after due proceedings had, on any of the grounds authorized by law, or until revoked in a suit by the Attorney General as provided by law, it would continue to have the right to exploit the inventions covered by said patents. Appellant acted in good faith in purchasing these patents, we repeat, and has expended many thousands of dollars in exploiting the inventions covered by them, and in litigation concerning the same.

A patent is a contract between the inventor and the Government.

Robinson on Patents, Vol. 2, par. 419.

It is binding upon the Government and it is without the power of the Government to nullify this contract except under the conditions and in the manner prescribed by law.

“For when a patent has been signed and secured in the Patent Office it cannot be revoked or cancelled by the President of the United States, or any other officer of the Government.”

Walker on Patents, p. 284, citing *McCormick Mach. Co. v. Aultman*, 169 U. S. 608.

Patent rights once vested are therefore incapable of being divested by Act of Congress.

Walker on Patents, p. 139, citing *McClurg v. Kingsland*, 1 How. 202.

Nor can Congress do indirectly that which it is forbidden to do with directness. It cannot destroy nor seriously impair the value of a patent right under the guise of altering or repealing the existing remedies applicable to its enforcement, any more than it can so treat any other kind of property.

Same authority, citing *Green v. Biddle*, 8 Wheat. 75;

Bronson v. Kinzie, 1 How. 317.

Congress cannot lawfully deprive a citizen of the right to use patented machines after he has lawfully purchased them from the patentee.

Bloomer v. McQuewan, 14 How. 539.

The only authority competent to set a patent aside or to annul it is vested in the judicial department of

the Government; and this can be effected only by proper proceedings taken in the courts of the United States.

U. S. v. Tel. Co., 128 U. S. 315;
McCormick v. Aultman, 169 U. S. 608.

A patent may be repealed, and equity has jurisdiction to repeal letters patent for inventions where they were obtained by fraud, whenever the United States files a bill of complaint, stating the facts and praying that the letters patent may be annulled. The same is true if the patent is issued by mistake, except the mistake be one of judgment in deciding any debatable question of difference of invention.

Walker on Patents, p. 284, citing McCormick Mach. Co. v. Aultman, *supra*.

In such cases, however, the United States acts through the United States District Attorney of the district in which the action is brought, and he acts under the direction of the Attorney General of the United States.

Same authority, p. 285, and cases cited.

It is also true that the things covered by patents are as much subject to the police powers of a State or municipality as any other thing.

The action of the Secretary, however, was not based on any of the statutory grounds for attacking a patent, nor did he invoke any of the authorized modes of procedure. In effect, the action of the Secretary of Agriculture amounts to his officially declaring that the patentee, or the owner of the patent, and their licensees, shall not do what they have been authorized to do in

the name of the United States, and this without the decision of any court. We look in vain through the statutes for any power conferred upon the Secretary of Agriculture by right of which he is authorized to declare in his official capacity that a certain process, or a certain product, is illegal and in violation of the law. He is vested under the law with purely ministerial functions, among which is to lay the sworn findings of the analyst before the proper District Attorney. The law, and the Rules and Regulations which the respondent assisted in formulating, in effect seal his mouth until after the judgment of the Court, **and then not for thirty days may he publish his findings.**

Nor can this respondent take refuge behind the statement that the said Food Inspection Decision 100 is only an expression of opinion. The opinion of James Wilson is one thing; the opinion of James Wilson, as Secretary of Agriculture, is an entirely different thing. In the latter case he wrongfully assumes to officially declare a certain thing to be a violation of the law before a court has so judicially declared as provided by the statute; he wrongfully assumes the right to declare such a thing to be an illegal article of interstate commerce before a court has so declared as provided by the statute; he wrongfully assumes the right and power to authorize the sale of this alleged illegal product for a period of six months. These are in the nature of official acts, purporting to be authorized by law, and were intended to, and did, amount to an official declaration, and were intended to be received, and were received, by the millers of the United States using the process, as well as by the public generally, as an official finding. And it is but natural to suppose that a publication of

the character in question, bearing upon its face all the marks of a solemn declaration of the Department, would be accepted by the public as a final and conclusive legal determination by the respondent.

Furthermore, the Secretary of Agriculture at most can only decide that **a given product** which has been examined by his analyst or examiner is an adulterated product, and the question for determination is still one of fact in each particular case to be determined by a court of competent jurisdiction; and the accused in each case is entitled on demand to a trial by jury. In the absence of a judicial decision that flour bleached by peroxide of nitrogen **is in all cases, and under all circumstances, necessarily an adulterated product** under the Food and Drugs Act, June 30th, 1906, he has no authority under the law even after a judgment of the court, to make such a blanket ruling.

The great injustice of permitting the Secretary of Agriculture to make and publish such decision in advance of a judicial finding, is aptly illustrated in the benzoate of soda case, in which the Department of Agriculture pronounced the use of this preservative to be in violation of the law, and to be harmful and even poisonous. Recently the Referee Board of Scientific Experts, appointed to pass on such subjects, decided exactly to the contrary, and its use has now been officially permitted by the Department (see Food Inspection Decision 104). In the meantime, however, manufacturers using this preservative in a legitimate way had been harassed and worried, and their business seriously injured—certain unscrupulous manufacturers taking advantage of the situation to advertise their goods as being superior by reason of being free

from preservatives, and using the opinion of the Department as authority for casting doubt and suspicion upon the product of those manufacturers using the preservative. The same is true with respect to copper salts, the use of which was forbidden in F. I. D. 92, and allowed in F. I. D. 102.

We contend that this appellant has, in effect, been deprived of its property without due process of law. And it is immaterial that the Secretary did not attempt to pass upon the appellant's patented process, or specifically mention the appellant or its process by name in his decision. He cannot accomplish by indirection that which, if directly done, would be manifestly unlawful. It is inconceivable, under our form of government, that such valuable property as represented by these patents, after having been legally acquired, can be rendered valueless, and the rights so acquired nullified, by the mere action of an executive officer of the Government.

IV.

MANDAMUS THE PROPER REMEDY.

The answer does not deny the jurisdiction of the Court to mandamus the Secretary of Agriculture in a proper case, and, indeed, no authority need be cited to this point as the right is so clearly established by decisions of the Supreme Court as to be beyond controversy. Nor does the respondent seem to question the jurisdiction of the Court to mandamus the respondent under the circumstances of the present case, as an abstract proposition. It may be well, however, in this connection to refer to the case of *Garfield v. United States ex rel. John E. Goldsby*, 211 U. S. 249, previously cited, and in which the Court said:

“It is insisted that mandamus is not the proper remedy in cases such as the one now under consideration. But we are of the opinion that mandamus may issue if the Secretary of the Interior has acted wholly without authority of law.”

And again the Court says:

“But, as has been affirmed by this Court in former decisions, there is no place in our constitutional system for the exercise of arbitrary power, and, if the Secretary has exceeded the authority conferred upon him by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action.”

In the recent case of *Moore, Commissioner of Patents v. United States ex rel. Boyer*, decided December 22, 1908, and the only report of which case in the possession of counsel is found in Vol. 138 of the *Official Gazette*, January 12, 1909, page 530, the Court of Appeals of the District of Columbia made the following statement:

“We recognize the well established principle that courts will intervene to protect the citizen when his constitutional or legal rights are being invaded by the exercise of arbitrary power. Where an officer, acting under assumed authority vested in him by virtue of his office, undertakes in the performance of his official duties, without due process of law, to deprive the citizen of rights he has acquired by administrative or judicial proceedings, the courts will afford protection, either by mandamus or injunction.”

In *Louisiana Board of Liquidation v. McComb*, 92 U. S. 531, the court, speaking by Mr. Justice Bradley, said:

“But it has been well settled that when a plain official duty, requiring no exercise of discretion, is

to be performed, and performance is refused, **any person** who will sustain personal injury by such refusal may have a mandamus to compel its performance; and when such duty is threatened to be violated by some positive official act, **any person**, who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases the writs of mandamus and injunction are somewhat correlative to each other.”

This case was cited with approval in *Noble v. Union River Logging Co.*, 147 U. S. 170. In the case at bar, one of the prayers of the petition is that the respondent be compelled to proceed according to law. He has proceeded, and has threatened to proceed further, in a manner contrary to law.

Nor is there any ground for denying the writ on the assumption that the court would thereby be controlling judicial actions of the Secretary of Agriculture. There is but one Act of Congress to be examined, and it is specially directed to the Secretary of Agriculture. Its construction is quite plain and unmistakable. It directs the Secretary of Agriculture to do a certain specific thing after he shall have arrived at a certain conclusion in the manner specifically provided by the Act. As was said by the Supreme Court in the case of *Roberts v. U. S. ex rel. Valentine*, 176 U. S. 22:

“Unless the writ of mandamus is to become practically valueless, and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judg-

ment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law directs him to perform an act in regard to which no discretion is committed to him, and which upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the Court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the powers of the Court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required.”

The case at bar, like the case last cited, is clearly distinguished from the case of the United States *ex rel.* Dunlap v. Black, 128 U. S. 40, in which the writ was denied because the decision which was demanded from the Commissioner of Pensions, required of him in the exercise of his official duty to examine several Acts of Congress, their construction, and the effect which the later Acts had upon the former, and come to a conclusion, all of which required the exercise of judgment to such an extent as to take his decision out of the cate-

gory of a mere ministerial act. A decision upon such facts, the Court said, would not be controlled by mandamus.

Of course, in the present case, under the authority of *Garfield v. Goldsby*, cited above, we are seeking to have the Secretary of Agriculture vacate a wrongful judgment or decision, as well as to have him perform the ministerial acts required by the Food and Drugs Act. But the principle involved in either case, as determining the right to the writ, we apprehend to be the same.

Mandamus will lie to compel officers to conform to the requirements of a statute.

State v. Mitchell, 31 Ohio St. 592.

The cases are very numerous which hold that where a Judge of an inferior court has, in rendering a judgment, exceeded his authority, he may be compelled to vacate the judgment.

Gains v. Caldwell, 148 U. S. 228.

Where the U. S. Circuit Court has, without authority of law, assumed jurisdiction of an indictment found in the courts of the State, the State is entitled to have the prosecution remanded to its courts by a writ of mandamus issued to the Judge who has so unlawfully assumed jurisdiction.

Virginia v. Paul, 148 U. S. 107.

Mandamus is the appropriate remedy to restore an attorney disbarred, where the court below has exceeded its jurisdiction in the matter.

Re Robinson, 19 Wall. 505;

Re Bradley, 7 Wall. 364.

Mandamus may issue to compel a clerk of a county to discharge his duties as clerk, and to obey the commands, and to record the proceeding of county commissioners *de facto*, and to forbid him to assume to determine any contest between rival commissioners.

Delgado v. Chavez, 140 U. S. 586.

The principal office of a writ of mandamus is to enforce the performance of official duties, and when acts are done, without authority of law, in the assumed discharge of those duties, they may be vacated, or, if in the form of orders, or the like, expunged. (Garfield v. Goldsby, *supra*.) The proper function of a mandamus is to compel the doing of a specific thing, and when a party has a clear legal right to demand the performance of a specific duty, and there is no other adequate remedy, mandamus will generally lie to compel performance.

Kendall v. U. S., 12 Pet. 524;
Union Pacific Co. v. Hall, 91 U. S. 343;
Butterworth v. U. S., 112 U. S. 50;
U. S. v. Kendall, 5 Cranch (C. C.) 163;
26 Fed. cases, No. 15,517.

The common law rule that mandamus will not be granted when the right sought to be enforced is doubtful, even if applicable under the statutory provisions, does not refer to a case where the doubt is one arising upon the mere construction of a judicial order, or a legal doubt as to the effect or meaning of a record. (Larkin v. Harris, 36 Iowa, 93.)

A doubt as to the construction of a statute imposing the duty will not oust the remedy by mandamus. (State v. South Kingston, 18 R. I. 258.) If, however, the

judgment or discretion is abused, and exercised in an arbitrary or capricious manner, mandamus will lie to compel a proper exercise thereof.

Ex parte Burr, 9 Wheat. 529;

Ex parte Vir., 100 U. S. 339.

So where the law has limited the discretion of a board or officer mandamus may be used to keep such board or officer within the limits of such discretion. (*Ex parte Vir.*, *supra*; *State v. St. Louis School Board*, 131 Mo. 505.)

If by reason of a mistaken view of the law, or otherwise, there has been in fact no actual and *bona fide* exercise of judgment and discretion, as, for instance, where the discretion is made to turn upon matters which under the law should not be considered, mandamus will lie.

A. & E. Enc. of Law, Vol. 19, page 739, and cases cited.

Mandamus will lie to compel officers to conform to the requirements of a statute, although they have already acted, but erroneously, through misunderstanding the requirements.

State v. Mitchell, 31 Ohio St. 592.

In the case of *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, which was an action for injunction against the Postmaster General, the latter had decided that the business of the complainant was fraudulent, and had issued an order forbidding the local postmaster to deliver any mail to the complainant, and to stamp the mail fraudulent and return it to the sender.

The Court held that the action was unauthorized under the law, and in the course of its decision stated as follows:

“That the conduct of the postoffice is a part of the administrative department of the Government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head, or one of the subordinate officials of that department, which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief.

* * * * *

“The facts, which are hereby admitted of record, show that the case is not one which, by any construction of those facts, is covered or provided for by the statutes under which the Postmaster General has assumed to act, and his determination that those admitted facts do authorize his action is a clear mistake of law as applied to the admitted facts, and the courts, therefore, must have power in a proper proceeding to grant relief. Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law, and is in violation of the rights of the individual. Where the action of such an officer is thus unauthorized, he thereby violates the property rights of the person whose letters are withheld.”

It may be mentioned, in passing, that in this case the Court also stated:

“That the complainants had a hearing before the Postmaster General, and that his decision was made after such hearing, cannot affect the case.”

So in the case of *Payne v. United States*, 20 App. D. C. 581, which was a mandamus proceeding to compel the Postmaster General to admit a certain publication to the mails at second-class rates, the Court, in granting the mandamus, said;

“It is very clear that the Congress of the United States has not committed to the Postmaster General, or to any one else, the matter of determining what should be carried in the mails as second-class matter, and what as matter of the third class. It has reserved that power exclusively to itself. It has itself made the classification; and it is not competent for the Postmaster General to add anything to the statute or to take anything from it. * * * It is not the province of the Postmaster General to remedy the evil, if evil there is, by a postal regulation, or by unwarranted interpretation of the law.

* * * * *

The citizen who desires to have his publication carried in the mails of the United States as second-class mail matter, and who has fully and fairly complied with all the requirements of the statute in regard thereto, has acquired a positive legal right to have it so carried; and his right will be enforced by the writ of mandamus, if the Postmaster General arbitrarily or without valid legal reason refuses to receive and transmit such publication. * * * It is not competent for (him) to impose additional requirements beyond those specified in the statute.”

That mandamus is the proper remedy in the case at bar there can be no question. The prayer for relief is that the Secretary of Agriculture be commanded to withhold the recommendation of prosecution against manufacturers of and dealers in flour because of being bleached by the Alsop process, which means, exclu-

sively, flour bleached by nitrogen peroxide, and that the finding or decision previously made of the said Secretary be revoked and that he be commanded to cancel and annul the same. And, further, that the said James Wilson, Secretary of Agriculture, be commanded by this Honorable Court to proceed relative to the subject-matter hereof in strict conformity with the provisions of the Food and Drugs Act, June 30, 1906, and of the Rules and Regulations thereunder promulgated and adopted.

In the case of *State ex rel. v. Public Schools*, 134 Mo. 312, the Court ordered as follows:

“Inasmuch, therefore, as the said board and the said election committee have failed and refused to perform their duty in an impartial manner, and the duty is cast upon this Court to correct the abuse of their franchise, and inasmuch as the election laws of the State furnish a safe and certain rule of impartiality for the conduct of elections by the people, it is considered, ordered and adjudged that the said school board and the said respondents proceed at once to revoke the said partisan appointments of judges and clerks by them made.”

State ex rel. v. Judges, 25 La. Ann. 149;
Baldwin v. Branch, 48 Mich. 525;
Jacobsin v. Hosmer, 76 Mich. 234.

V.

APPELLANT'S INTERESTS INVOLVED.

The answer sets up that this appellant is without such interest in the case as will entitle it to ask for the writ of mandamus. This question has been dealt with to some extent in showing the interest to the appellant's patent rights resulting from the decision of the Secretary of Agriculture. We believe it is clear, however,

under the decisions, that any member of the public is entitled to enforce a public duty at the hands of an officer of the Government by a writ of mandamus. As was said by the Court in *Union Pacific R. R. Co. v. Hall*, 91 U. S. 343:

“There is, we think, a decided preponderance of American authority in favor of the doctrine that private persons may move for a mandamus, to enforce a public duty, not due to the Government as such, without the intervention of the Government law officer.”

“Any person who will sustain personal injury by the refusal of an officer to perform a plain official duty may have a mandamus to compel its performance.”

Board of Liquidation v. McComb, 92 U. S. 531.

Appellant has a direct and substantial interest in the subject-matter of the unauthorized action of the Secretary. The finding complained of is such as brands the flour bleached by relator's process as illegal, and in consequence is destructive of relator's property and property rights. In view of the fact mandamus may be granted upon the application of any person who is a citizen, resident or tax payer, though he may be affected no more than other persons, the Court cannot escape the unalterable conclusion that relator having a substantial interest at stake, as in the case at bar, has also a clear right to substantial relief by means of the writ of mandamus. It cannot be denied that it is respondent's duty to the public to properly proceed under the law. His conduct in the enforcement of the Food and Drugs Act of June 30, 1906, materially affects every citizen and industry in the country. As to any act upon

his part, of an unauthorized character which may in any way affect any industry, enterprise or business, the persons engaged in such industry, enterprise or business, have a perfect right to proceed as relator has proceeded herein.

State v. Gracy, 11 Nevada 223;
Glencoe v. People, 78 Ill. 382;
People v. Meakin, 56 Hun. 626.

It has always been held that when the default complained of affects a private right, the person injured by the neglect or by the improper act may be the relator in mandamus proceedings to enforce due performance.

Garrison v. Webb, 107 Ala. 499;
Lyon v. Rice, 41 Conn. 245;
State v. Davis, 54 Mo. App. 447.

In the case at bar there is involved, first, the interest of the general public in the benefits to be derived from a proper discharge of official duty on the part of the Secretary; and second, the right of any individual affected in any way, to a correct discharge of official duty on the part of the Secretary. In other words, the public generally is interested in a proper discharge of official duty on the part of the Secretary, and this appellant is directly interested because its sole business is the manufacture of machines and the sale of a process which has been unlawfully condemned and rendered valueless by the Secretary.

The presumption is that the patented process and apparatus owned and sold by the relator is one of value and of public utility. It is further presumed that flour treated by the process is not adulterated in any way. If it be true then that the Secretary has unlawfully and erroneously found the flour bleached by peroxide of

nitrogen is an adulterated and therefore illegal, product, such finding substantially condemns the use of the apparatus manufactured by relator and the practice of the process sold by it. Conceding, as we must, that the apparatus and process of relator is of great benefit and utility to the public, it is essential to the welfare of relator that the Secretary be required to carry on his investigation, which in any way affects the value of relator's property, in the manner prescribed by law, and the rules adopted for the enforcement of such law.

If the Secretary has been remiss in his duty and has made a finding without due observance of all the formalities required of him under the statute, relator has suffered injury and has the right to proceed by mandamus.

Indeed, under the circumstances, it cannot be questioned that relator has perhaps a more substantial right in the matter involved by the alleged erroneous ruling of the Secretary than any miller or individual in the country. The miller, of course, can manufacture flour and put it on the market as in former times, without the use of relator's patents. While this would deprive the general public of the benefit to be derived from the patent as such, it would not be what might be termed a confiscation of the miller's property. Yet, it must be admitted that it would work an absolute confiscation and destruction of the property of the relator, and thereby destroy valuable rights and property possessed by it, which, under our law and constitution cannot be done except by due process of law and with trial by jury if demanded.

The distinction between cases where a private person may act as relator to enforce a public duty and where,

to maintain the action, he must show an interest, rests largely upon the facts presented by the respective cases. The line has never been very clearly drawn. It is, however, settled that where private or corporate rights are affected, such person or corporation possessed thereof, have the right to institute proceedings as relators. Of course, if the relator be the mere informer and the State the real party in the enforcement of a mere public duty, the State or Government is the party in interest.

In the case at bar the relator has an interest independent to that which he possesses in common with the public at large, and the principle that the relator must have an interest, is thus satisfied. The fact that relator's property is affected in value and use by the erroneous finding and wrongful acts of the Secretary constitutes such a material interest as authorizes the institution of the proceedings. The interest of relator, independent of that which it possesses in common with the public at large, is thus made apparent.

Van Horne v. State, 51 Neb. 231;
State v. Shropshire, 4 Neb. 411;
State *ex rel.* v. Kearney, 25 Neb. 266;
State *ex rel.* v. Public Schools, 134 Mo. 296;
Boylan v. Warren, 7 Amer. State Rep. 551;
State *ex rel.* v. Williams, 32 Amer. Rep. 19.

We repeat, therefore, that the interest of this appellant in the decision of the Secretary of Agriculture complained of, is direct and vital. As previously stated, this decision has resulted in practically putting appellant out of business, and in occasioning it very great monetary loss. These are the facts; and they follow directly from the actions of the Secretary complained of. It seems preposterous to assert, as is done in the

answer, that because the decision of the Secretary of Agriculture refers to flour it does not affect the appellant. The decision held that “flour bleached by peroxide of nitrogen is an adulterated product”. It just as certainly held **the bleaching of flour by peroxide of nitrogen is unlawful**; because the former condition can only exist when the latter action is practiced. And as this alleged unlawful product can only be produced by using this appellant’s process, it follows that the fate of said process is indissolubly bound up in the ultimate decision of the courts as to the correctness of the Secretary’s findings.

VI.

MANDAMUS NOT BARRED BY OTHER REMEDIES.

While the answer does not directly challenge the jurisdiction of this Court to entertain this proceeding, on the ground that the appellant has an adequate remedy elsewhere, we think it well to deal with this subject.

Another remedy to defeat mandamus must be adequate to enforce the right or the duty in question. Such remedy must be tested by its sufficiency to place the party in the same position he occupied before the omission of the duty complained of, or would have occupied had the duty been performed.

Kendall v. U. S., 12 Pet. 524.

In the cited case application to Congress; removal of the Postmaster General from office; and an action against him for damages, were all held not to be remedies which would defeat mandamus.

See also United States v. Black, 128 U. S. 40 (Case 993).

“The other adequate remedy which will bar an application for a writ of mandamus is a **legal** remedy. The fact that relief might be obtained in equity is not a conclusive answer to the application. It is merely a circumstance affecting the discretion of the Court.”

A. & E. Enc. of Law, Vol. 19, page 747.

“An equitable remedy will not deprive a party of his legal remedy by mandamus.”

Cyc. 26, 172, and cases cited.

The reason for these statements seems not far to seek, for one of the grounds of jurisdiction in equity, and an essential ground, is that the plaintiff has no adequate remedy at law. If the right to a mandamus is otherwise clear, this is such a remedy at law as might very justly be held to defeat the application for an injunction. That mandamus is such a legal remedy seems clearly to be decided in *Kendall v. United States*, 12 Pet. 524, above cited, in which the Court said:

“That proceedings on an application to a court of justice for a mandamus are judicial proceedings, cannot admit of a doubt, and that this is a case in law is equally clear.”

The writ of mandamus does not issue from, or by any prerogative power, and is nothing more than the ordinary process to which every one is entitled where it is the appropriate process.

Kentucky v. Dennison, 24 How. 66.

Mandamus, in modern practice, is nothing more than an action at law between the parties, and it is not now regarded as a prerogative writ.

Kentucky v. Dennison, *supra*.

Mandamus lies to enforce an established right for the invasion of which no other specific legal remedy exists.

Marbury v. Madison, 1 Cranch. 137.

There are some State cases, it is true, which have held that an adequate and complete remedy at equity will defeat mandamus, but these cases must necessarily rest on the conception of the writ of mandamus as an extraordinary or prerogative writ. This view of the writ, as we have seen above, has long since ceased to prevail in the United States courts. Thus as far back as *Kendall v. United States*, 12 Pet. 524, cited above, the Supreme Court said:

“But the writ of mandamus, as it is used in the courts of the United States * * * cannot, in any just sense, be said to be a prerogative writ, according to the principles of the common law.”

We have endeavored to point out above, however, that on the facts of the case as presented in the petition, the right of the relator to the writ is clear.

As to the remedy by injunction, we have no hesitation in saying that this would be an inadequate remedy. This appellant seeks to undo what has been unlawfully done, that it may be able, through the judgment of this Court, to say to the milling world that the Secretary of Agriculture had no authority in law to make and publish the decision complained of, and that such decision has been annulled and vacated.

It seeks such a decision, among other reasons, that it may be enabled to resume its business until such time, if ever, as the Court shall hold it to be an unlawful business; and that it may be able to collect the vast sums of money due it, and payment of which is refused

on the ground that the flour bleached by the appellant's process is an adulterated and illegal product. Unless we mistake the result of the remedy by injunction, it could properly go no further in this case than to restrain further action by the Secretary of Agriculture, such as to forbid further publication of his decision. But this would avail little, for the decision has already been extensively circulated, and through the medium of the press and of other agencies it is now public knowledge in this country and abroad. So long as this decision stands, will the debtors of this appellant refuse to pay the money justly owing by them to it, using this decision as a basis for their refusal, and practically no new business can be done by appellant.

If we understand the law the acts of the Secretary of Agriculture in the premises are wrongful and unauthorized acts, and this appellant, we conceive, has the undoubted right to have this court stamp those actions as unlawful and void. The power to decree flour bleached by peroxide of nitrogen an adulterated and illegal product, and thereby bar it from interstate commerce belongs to the United States court, and until such time as its voice has been heard this appellant has a right to demand that the unauthorized condemnation of that process by the respondent be pronounced by this Court to be itself illegal and in excess of the power vested by law in the Secretary of Agriculture.

Before the writ can be denied on the ground that no benefit would result to relator, it has been held that it must be clear that no benefit can possibly result. (*Reg. v. Bridgeman*, 10 Jur. 159, 15 L. J. M. C. 44, 2 New Sess. Cas. 232); and that in the case of a clear right the writ may issue in the discretion of the Court, al-

though it may be of no avail. (U. S. v. Bowyer, 25 App. Cas. (D. C.) 121; People v. Alton, 209 Ill. 461, 70 N. E. 640; Smith v. Lawrence, 2 S. D. 185, 49 N. W. 7); or it is doubtful if there will be substantial benefit (State v. Boyden, 18 S. D. 388, 100 N. W. 763). And it has been held also that a mandatory duty may be enforced although the relator may not be benefited (*Ex parte Jordan*, 94 U. S. 248).

The merits of the process may not properly be raised by the respondent.

“In a case where the act to be done is but a step toward the final result, and is but the means of setting in motion a tribunal which is to decide upon the final relief claimed, then the inferior officer or tribunal may not inquire whether there exists the right to that final relief, and can only ask whether the relator shows a right to have the act done which is sought from him or it.” (26 Cyc., page 152, citing *State v. Shannon*, 133 Mo. 139, 33 S. W. 1137; *People v. Canal Appraisers*, 73 N. Y. 443.)

VII.

OPINION OF JUSTICE STAFFORD.

A careful reading of Justice Stafford's opinion makes it clear that he has not dealt at all with the vital facts involved in this case. The whole opinion is grounded on the view that the Secretary of Agriculture had made up his mind that bleached flour is obnoxious to the provisions of the Pure Food Act, and that the Court cannot change the fact that the Secretary entertains this opinion, nor command him not to make his opinion known. If this were all that were involved in the action of the Secretary of Agriculture complained of, we should be inclined to agree with Mr. Justice Stafford

that the Court was powerless to do anything in the premises. The Honorable James Wilson, in common with all other citizens of this country, has a right to his opinion and undoubtedly has a right to publish his opinion. In the latter event he may render himself liable to an action for libel, but certainly no one would claim that the Court had the right, or could, make him change his opinion or vacate or annul it. We are not complaining that Secretary Wilson's opinion of the bleaching process is unfavorable, nor do we complain that Secretary Wilson has indicated an intention to recommend prosecutions against manufacturers or dealers in bleached flour after June 9th, 1909. What is complained of, and what is the fact, is that the Government official, James Wilson, Secretary of Agriculture, and as such, assuming to act under and by virtue of the Food and Drugs Act, June 30th, 1906, conducted a public hearing on the subject of bleached flour, assumed to receive and pass upon testimony adduced at such hearing, and assumed to make and publish a decision, which was intended to be received, and in fact was received, by the public at large, not as the expression of the personal opinion of James Wilson, but as indicating and defining the official view of his great Department with reference to the subject investigated, and which was intended to define, and was received by the public at large as defining, the legal status of flour bleached by peroxide of nitrogen, and that all this was done without authority of law. The circumstances surrounding the publication of Food Inspection Decision 100 complained of, and a knowledge of the workings of the Agricultural Department under the pure food law, seem to render it ex-

tremely inappropriate to refer to this said decision as a mere opinion of Mr. Wilson. It may be that, for Mr. Wilson was present throughout the hearing and possibly formed an opinion. But it is a great deal more than that. In fine, it could be just what it is and not reflect the personal opinion of the Secretary of Agriculture at all; for, as is well known, the Bureau of Chemistry could have conducted an investigation, and the Board of Food and Drug Inspection of the Agricultural Department have held a hearing, and this Food Inspection Decision 100 have been published with the approval of the Secretary of Agriculture, in the exact form in which it appears, except for the use of the personal pronoun, without the Secretary of Agriculture personally knowing aught of the subject-matter of the decision. In the case at bar, it chanced, owing to the magnitude of the interests involved, and for other reasons not necessary to mention, that the Secretary did sit in the case, and did announce the decision; but both in this case, and the case assumed above, which is the actual practice in the great majority of cases investigated by the Department, the announced decision would be an official expression of the views of the Department and not an expression of the personal opinion of the Secretary, or of the members of the Board of Food and Drug Inspection, respectively, although this might be involved.

Furthermore, if this decision is only an expression of opinion, and only reflects the mind of the Honorable James Wilson, how does it happen that the decision states that "no prosecutions will be recommended by this **Department** * * * for a period of six months from the date hereof"? The fact is clear, we think,

that this decision was intended as an official finding of fact, and that the Secretary clearly indicates that the Department, as a branch of the Federal Government, will recommend prosecutions based on such finding of fact. Now it is immaterial to this action whether the finding of the Secretary be correct or erroneous. The gravamen of the petition is that he made and published any finding. This appellant has the clear and indisputable right to practice, if it wants to, or to license others to practice its process of bleaching flour by peroxide of nitrogen, until such time as a court of competent jurisdiction shall declare that right annulled.

The opinion states that relator is not the owner of any flour. The learned District Attorney, in the court below, made much of this fact and claimed that relator had no legal status in this case. There are two perfect replies to this contention:

1. The appellant does not have to bleach flour, or to own bleached flour, to give it a legal standing before this Court. In the case of *Louisiana Board of Liquidation v. McComb*, 92 U. S. 531, previously cited, the Supreme Court said “**any person** who will sustain personal injury by the refusal of an officer to perform a plain official duty may have a mandamus to compel its performance.”

See also

Union Pacific R. R. Co. v. Hall, 91 U. S. 343,
supra.

We have shown, and it is not denied, that the business of this appellant has been absolutely ruined by the decision of the Secretary of Agriculture complained of. In truth, as previously stated, the injury to the appel-

lant is far greater than the injury to the millers, for they can continue to manufacture flour without bleaching, but the appellant cannot continue its business at all.

2. The appellant, while not, in fact, engaged in the manufacture of flour, is given by its patent grant the exclusive right to bleach flour by its process as well as the exclusive right to manufacture the bleaching machines, for the grant of the statute is to **manufacture, use and sell**. It has elected to manufacture and sell and to license others to use, but the injury to its patent right by the publication of the decision of the Secretary of Agriculture is just as direct and vital as though appellant were itself engaged in bleaching flour. It seems scarcely fair to appellant to intimate, as the opinion of the lower court does, that we are attempting to have the Court compel the Secretary of Agriculture to change his mind, or to take back what he said. We are very much in earnest in this matter, and we certainly would never think of asking the Court to do something that is impossible. What we have asked, we believe we have the right to ask, and the Court to grant; and that is, that the Secretary of Agriculture, among other things, be compelled by the order of this Court to annul and vacate his decision. This is something tangible and feasible. It has been done before, and if we understand the law as announced by the Supreme Court in the case of *Garfield v. Goldsby*, 211 U. S. 249, *supra*, it is what can be, and should be, done in the case at bar.

Under any view of the case, therefore, and in the light of the authorities cited, the right of the relator to the writ seems clear and complete; and the act of issu-

ing the writ under the facts presented in this case will be in entire harmony with the well defined and accepted course of procedure of courts of law in dealing with the subject of mandamus proceedings.

It is respectfully submitted that the court below erred in overruling the demurrer and that the same should be sustained.

Very respectfully,

BRUCE S. ELLIOTT,

SAM B. JEFFRIES,

GEORGE W. REA,

Counsel for Appellant.

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED
MAY 19 1909

Henry W. Hodges,
clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1909.

No. 2021.

No. 8, Special Calendar.

UNITED STATES OF AMERICA EX REL. ALSOP
PROCESS COMPANY, APPELLANT,

vs.

JAMES WILSON, SECRETARY OF AGRICULTURE,
APPELLEE.

BRIEF OF APPELLEE.

DANIEL W. BAKER,
United States Attorney.

STUART McNAMARA,
Special Assistant to Attorney-General.

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APPELLEE.

BRIEF OF APPELLEE.

Statement of Facts.

This is an appeal from a judgment of the court below dismissing the petition and refusing to grant a mandamus against the Secretary of Agriculture.

The appellant filed its petition, stating that it is a corporation of Missouri, engaged in the manufacture of machinery adapted to bleaching flour (Rec., p. 1), and that its machinery is on the market throughout the United States, and is extensively used by millers for the purpose of bleaching flour. The patent of appellant is known as the Alsop Process, and is protected by letters patent (Rec., pp. 2, 27). The petition claims that the Alsop process, which is followed by the machinery which appellant manufactures, and which is used by millers throughout the United States, is a harmless process, being accomplished by the passage of pure air through a flaming discharge of electricity and the application of the resultant

gaseous medium to the freshly-milled flour as the latter passed through an agitator (Rec., pp. 2, 28). The flour thus treated, the petition represents, has no substance mixed or packed with it so as to injuriously affect or to reduce its quality or strength; no valuable substance of the flour has been abstracted, and the flour has not been mixed, colored, or in any manner treated whereby inferiority is concealed, nor does it contain any deleterious ingredient or other element injurious to health (Rec., p. 2). The petition then claims that prior to November 18, 1908, the Secretary of Agriculture inserted advertisements in milling journals and other periodicals throughout the United States giving notice that a hearing would be held on the subject of bleached flour, at the Department of Agriculture, on November 18, 1908. At the appointed time and place the appellant appeared and attended the hearings before the Secretary of Agriculture.

Testimony for and against the bleaching of flour was introduced at the hearing. The attorney for the appellant conducted the case of those millers who favored bleaching flour, and the manager of the appellant corporation gave extended testimony. Said hearing was public and the proceedings were reported stenographically and made accessible and open to the public (Rec., p. 3). On December 10, 1908, the Secretary of Agriculture issued a bulletin announcing his decision that after considering all the testimony and the report of those who have investigated the subject and also the literature and the unanimous opinion of the Board of Food and Drug Inspection, flour bleached by nitrogen-peroxide is an adulterated product under the Food and Drugs Act approved June 30, 1906; that the character of the adulteration is such that no statement upon the label will bring bleached flour within the law, and that the flour can not be legally made or sold under the Food and Drugs Act;

but because of the extent to which the bleaching of flour was now practiced, and because of the immense quantity of bleached flour on hand and in the process of manufacture, the Secretary of Agriculture stated that no prosecution would be recommended by his department for a period of six months after the date of his decision (Rec., p. 4).

The appellant claims that this decision was arbitrary, unlawful and oppressive; that it has worked irreparable injury to appellant and deprived it of its property without process of law; that since its promulgation appellant has been unable to sell its machinery (Rec., p. 5). Appellant claims that this decision was in violation of the Food and Drugs Act approved June 30, 1906, and appellant therefore prays to the court that the writ of mandamus issue to compel the Secretary of Agriculture, first, to withhold the recommendation of prosecutions against the manufacturers of and dealers in bleached flour by the Alsop process; second, that the writ command the Secretary of Agriculture to cancel and annul his decision and not to deliver or circulate additional copies thereof, and that his said order be for naught held; and third, that the Secretary of Agriculture be commanded by the court to deal with this question of bleached flour in strict conformity with the Food and Drugs Act and the regulations of the department promulgated thereunder (Rec., p. 6).

Upon a rule being issued (Rec., p. 64), the Secretary of Agriculture answered, admitting that the appellant corporation owned the patent known as the Alsop process for bleaching flour, but claiming that the patent rights of appellant are wholly collateral to the right of the appellee as Secretary of Agriculture to decide whether flour which appellant *does not own or manufacture*, when bleached by the use of nitrogen-peroxide, is deleterious and adulterated within the meaning of the Food

and Drugs Act approved June 30, 1906 (Rec., p. 65). The appellee, Secretary of Agriculture, set forth that the appellant had no interest in the matter of flour which conferred upon it a status to seek the writ of mandamus to compel the Secretary of Agriculture to vacate his decision as to the deleterious quality of bleached flour even if jurisdiction otherwise existed. The appellant did not own or manufacture flour; the appellant could in no wise be brought under the jurisdiction of the Secretary of Agriculture; the Secretary of Agriculture had no jurisdiction over appellant's machinery and had not attempted to condemn the machinery or to pass judgment thereon, but could only have passed judgment upon bleached flour, with which appellant had no legal connection (Rec., p. 65). While claiming that appellant had no status to raise the question whether the bleaching of flour by the use of nitrogen-peroxide produces a deleterious and adulterated product, yet the appellee answered that the averments of appellant's petition in this behalf were untrue and stated that the flour thus bleached is reduced in its quality and strength and is artificially colored so as to conceal inferiority, and the resultant product contains a poisonous and deleterious ingredient which renders it totally injurious to health. This said product, appellee states, is adulterated within the meaning of the Food and Drugs Act, approved June 30, 1906 (Rec., p. 66).

Appellee admitted the averments with respect to the hearing held by him on November 18, 1908. He further stated that for many months prior to this date he had made an exhaustive inquiry into the character, composition and purity of bleached flour, and that he caused the matter to be investigated by the Bureau of Chemistry of his Department, and from all the evidence adduced it was conclusively established that flour bleached by nitrogen-peroxide was adulterated within the meaning of

the Food and Drugs Act (Rec., p. 67). But in the exercise of abundant care, appellee decided to renew the investigation, in order to consider the matter more fully, and accordingly he decided to hold a public hearing and investigation of the question. The date was fixed for November 18, 1908. Said hearing was entirely advisory to appellee, and was wholly voluntary. The notice to the public was an invitation to those to attend who would so desire. By such hearing, appellee was put in possession of additional information. Appellee states that this hearing was authorized both impliedly in pursuance of the Food and Drugs Act approved June 30, 1906, which requires your appellee to decide certain matters therein involved, and therefore authorizes him to previously investigate such matters in order that he may so decide; and appellee further states that this hearing was expressly authorized by the provisions of the Agricultural Appropriation Act approved May 23, 1908, which appropriated money for the expenses of conducting such hearings (Rec., p. 68). After having duly considered the question in the course of the hearing, appellee became of the opinion that flour bleached by the use of nitrogen-peroxide was adulterated, and accordingly issued his decision, contained in a bulletin dated December 10, 1908 (Rec., p. 68).

Appellee denies the numerous averments of the petition that his action was without right or color of law (Rec., pp. 68, 69), and states that on the one hand the appellant has no status to ask this writ of mandamus because it does not deal in flour, which is the subject-matter of appellee's decision, but manufactures machines for those who do deal in flour; and on the other hand, denies the jurisdiction of the court to grant the writ to review his decision, the making of which is vouchsafed to him by specific authority of Congress under the Agricultural Appropriation Act of May 23, 1908, and the

Food and Drugs Act approved June 30, 1906, and by the general authority of Congress in the distribution of the powers of Government whereby to his Department is confided the jurisdiction to decide matters of such kind generally (Rec., p. 69). When appellee did decide that the bleaching of flour by nitrogen-peroxide produced a deleterious substance, he found that the practice of bleaching had been extensively pursued, and in order to reduce the inconvenience of persons using said bleached flour to a minimum, he stated that he would not report cases for prosecution prior to the expiration of six months from the date of the decision (Rec., p. 70).

To this answer the appellant demurred (Rec., p. 72), which was overruled pursuant to the opinion of the court (Rec., p. 72). Appellant stood upon this demurrer and final judgment was given for appellee, from which this appeal is taken, and the case comes to this court on such record.

ARGUMENT.

I.

The Proceeding is a Moot Case.

The petition discloses that there is nothing actual or subsisting which can be accomplished by the writ of mandamus. The court is asked to command the Secretary of Agriculture to withhold the recommendations of prosecutions against manufacturers of and dealers in bleached flour. The record shows that the Secretary has made no recommendations for such prosecutions. Nor does the record show that the Secretary intends to make such recommendations, or has made any threat that he will make such recommendations. On the other hand, even if he made no such recommendations, or even if the writ issue to prevent him from doing so, manufacturers

of and dealers in bleached flour could still be prosecuted at the instance of other officials by the provisions of section 5 of the Food and Drugs Act approved June 30, 1906.

The petition next asks that the court issue the writ of mandamus to set aside, cancel and annul the finding or decision of the Secretary of Agriculture. It is obvious that the court is powerless to alter the fact of the Secretary's decision or to make him take back what he has said. The court is also powerless to prevent him from publishing the fact of his decision, because the publication has already been made.

Finally, the petition asks that the court issue this writ to compel the Secretary to proceed according to law. Of course, the writ can not be used for such an indefinite and homiletic admonition to the head of an independent department of the Government. And, in fact, it would be utterly useless to do so, since the evil conduct complained of—that is, his failure to proceed according to law—has already taken place.

The whole scheme of these proceedings is directed towards compelling the Secretary of Agriculture to retract the public utterance of his on December 10, 1908, wherein he stated that he believed that flour bleached by nitrogen-peroxide was adulterated. The appellant does not seek to examine or to contest the correctness of the Secretary's decision. It aims merely at making him retract it. Obviously, the court will afford him no assistance in this effort. In the first place, the act to which the writ is directed has been consummated and has passed beyond the stage when it might be reached by the writ of mandamus. In the second place, the courts will not sit to consider the legality of something which is not governed by law, but which rests in the discretion and sense of propriety of the head of a department of the Government.

Whether or not his decision is correct remains to be decided at some future day when the Secretary initiates a prosecution of some one for manufacturing or dealing in bleached flour. The law has fixed the method by which such decision shall be reviewed. That method is prescribed by the Act approved June 30, 1906. The Secretary may proceed in a criminal prosecution under section 4 or in a civil proceeding under section 10. In other words, the correctness of his decision can be reviewed by the court and jury. Such a proceeding or prosecution has not taken place, nor has it been threatened. The single central fact which has happened is that the Secretary has made up his mind about bleached flour and has told the public about it. This has happened, and is no longer a pending matter. The appellant asks the court to issue a writ of mandamus to set this aside. It needs but the statement of this condition to expose to the court the absence of any condition on the face of the record whereby a judgment made by the court could possibly become the basis of any actual or proper relief.

Cardozo vs. Baird, 30 App. D. C., 86.

Gannon vs. Georgetown College, 28 App. D. C., 91.

Wills vs. Green, 159 U. S., 651.

II.

Appellant has no Legal Interest or Status to Seek the Writ of Mandamus.

It appears from the petition that appellant does not manufacture or sell bleached flour. It is not a miller. It is engaged merely in the manufacture of patented machines which are sold to the millers and to the trade, and are used by them for the purpose of bleaching flour. The Secretary of Agriculture has made no finding with respect to the machines or the process of the appellant.

Indeed, he could not do so, because he has no jurisdiction whatever over the appellant or its articles and machines. The Secretary of Agriculture could assert no power over the appellant to prosecute it for the making of its machines, nor could he condemn those machines or in any way bring the appellant under the Food and Drugs Act approved June 30, 1906. Consequently, the decision of the Secretary of Agriculture of December 10, 1908, of which appellant complains, can not be applied in any way to appellant nor affect it in any sense. That decision of the Secretary of Agriculture affects only flour which is bleached and the persons who bleach or sell it. It therefore appears that appellant has no legal interest which gives it a status to ask that the court issue its writ of mandamus to set aside a decision in which the appellant can not have any possible legal concern. Even if there were jurisdiction to issue the writ of mandamus against the Secretary of Agriculture to vacate this finding, at the suit of a proper party, there certainly can be no jurisdiction in the court to grant the writ to the appellant which has no status in court by reason of no interest in the decision, and which can not show any legal damage which it has suffered or may suffer therefrom. As the court below said in his opinion:

“The petitioner claims to be the owner of a patent on a bleaching process and to be injured by the announcement of this opinion and intention. He is not the owner of any flour. He merely owns the patent and makes and sells the machinery. He says that the Secretary did not proceed according to the provisions of the Pure Food Law in making up his mind; that he had no right to tell the public what opinion he had formed nor what course he intended to pursue; that if he is going to recommend prosecutions at all he is bound to do so at once and not wait six months. He therefore asks this court by the great writ of mandamus to command the Secretary to vacate

his decision, take back what he has said, and hereafter to proceed strictly according to the law. The mere statement of the proposition seems to furnish its own answer and to render an elaborate opinion unnecessary" (Rec., p. 73).

Appellant claims, however, that as its machinery is made for the purpose of bleaching flour, it will lose its market if the millers are informed that it is unlawful to bleach flour by nitrogen-peroxide, which the Secretary of Agriculture has so said. Even if this were true, it is evident that the appellant would not sustain legal damage such as would give him the right to a writ of mandamus. If the Secretary has jurisdiction to decide whether bleached flour is adulterated within the meaning of the Food and Drugs Act, the mere fact that appellant will be injured, by not being able to sell his machines which are sold for the purpose of bleaching flour, will not alter the case nor rob the Secretary of his jurisdiction. The Secretary merely exercises his jurisdiction and remains within it. The actual damage, if any, which falls to the appellant is collateral, and the Secretary is not concerned in it nor interfered with by it. The appellant can enjoy no right in his manufacture of patented articles if it be decided by the proper authority that the product for whose output these machines are sold violates the Food and Drugs Act. Certainly there is no greater right in the manufacturers of the machines which turn out the adulterated product than in the millers who actually make and the dealers who actually sell the adulterated product. The appellant can not make its private exigency of loss of trade a public necessity which would strike down the decision of the Secretary of Agriculture made under the authority of the Food and Drugs Act about an adulterated product simply because this public decision, whose merit is not contested, incidentally affects the personal profit of a private concern.

But the contention of the appellant, vicious as it is, does not necessarily follow. The appellant begs the question that the millers will use these machines and will continue to resist the Food and Drugs Act. It is true the decision has been made by the Secretary of Agriculture. But *non constat* that the millers will not accept the propriety of the decision and adjust their business to the new situation. It does not at all follow that the millers will continue to manufacture and sell bleached flour. And still less does it follow that even if they continue to manufacture bleached flour, that they will accomplish it by the use of nitrogen-peroxide according to appellant's process. It may be that they will attempt to bleach it by some other method which will not result in a product deleterious and adulterated.

So it appears that the appellant builds its claim of legal interest upon the first contingency, that the millers will contest the decision of the Secretary of Agriculture; and upon the second contingency that they will continue to bleach flour, and by no other means than the use of nitrogen-peroxide; and upon the third contingency that the millers in maintaining the first two positions *will also buy machines from the appellant*. The mere statement of such a claim carries its own refutation; and it must be remembered, first of all, that if the Secretary's decision be right, the appellant has no cause of action even though all these contingencies be true. That the decision of the Secretary is right is not and can not be contested in this case. Appellant simply asks to have it retracted, irrespective of whether it is right or wrong.

III.

The Public Hearing and the Decision of the Secretary Were Proper.

The claim of the appellant is that the Secretary of Agriculture had no jurisdiction to hold the public hearing which began November 18, 1908, nor to make the

finding of December 10, 1908. The appellant claims that under the Food and Drugs Act approved June 30, 1906, and the rules promulgated thereunder, the hearing should be private and should only be had after certain preliminary formalities of examining a specific sample, notice of the violation of the act to the party concerned, in conformity with sections 4 and 5 of the regulations prescribed under the Food and Drugs Act. This claim involves a misapprehension of the whole case. Section 5 of the rules and regulations, which provides for a private hearing with the examination of samples and the notice to the party concerned, prior thereto, related only to a hearing under the Food and Drugs Act when the Secretary may intend to recommend a criminal prosecution under section 4 of the act. Such a hearing is absolutely unnecessary under section 10 of the act, when a civil proceeding may be instituted. Moreover, that hearing is not required at all as a condition precedent to the simple fact of the prosecution, civil or criminal, for the reason that under section 5, such proceeding may be instituted at the instance of other officials than the Secretary of Agriculture.

By the provisions of the Food and Drugs Act approved June 30, 1906, it is evident that the Secretary of Agriculture is compelled to decide certain questions. In order to so decide he must inform himself. In order to inform himself he has the right to seek information from any source which is proper and fruitful. In this way he is authorized to seek information from experts, boards, witnesses or in any other matter of referendum whereby he is better enabled to approach the determination of the questions which the Food and Drugs Act places before him.

At the time of this hearing, the Secretary of Agriculture had no thought of proceeding against any one, much less the appellant. He had no concrete case under

the Food and Drugs Act. There was no defendant. The Secretary was simply studying the question. Had he selected the appellant or some other person as the one against whom proceedings should be brought under section 4 of the Act, then the claim of appellant might be well founded and the hearing should be had pursuant to the provisions of sections 5 and 6 of the regulations. But this was not the case. The Secretary of Agriculture did not then, and he has not yet, named any person or corporation as the defendant against whom proceedings are to be brought. He says in his answer that he was merely studying the question of the deleterious or adulterated character of bleached flour; in order to do this he called for a public hearing, that he might gather more light and information to enable him to properly decide.

Not only, however, is the Secretary thus fortified by the provisions of the Food and Drugs Act, in the course he has pursued, but Congress has conferred express authority on him in a separate law. Every department of the Government is necessarily obliged to make some investigations for the full discharge of the duties confided to it. While this is true of all the departments, it is especially true of the Department of Agriculture, which in one sense is the scientific department of the Government. Its province is largely occupied by the care of agricultural, food, chemical, and medicinal experiments, and the proper study of the questions these matters necessarily involve. It is therefore inevitable that the Secretary of Agriculture and those under him should make proper experiments, pursue different studies, undertake certain researches, and the like. Connected with such labors necessarily are hearings, public or private, as may commend themselves to the judgment of the Secretary. His Department must hold hearings in order to investigate, and then must digest, report, and illustrate the results of such investigations. Congress

has perceived the necessity for such hearings, and has approved of their expediency; it appropriates money yearly for this purpose, and this confers specific authority for the specific kind of hearing which appellant would have the court believe was arbitrary, oppressive, and without color in law. Congress has provided, in the Agricultural Appropriation Act, of May 23, 1908, as follows:

“That the following sums be, and they are hereby, appropriated, out of any money in the Treasury of the United States not otherwise appropriated, in full compensation for the fiscal year ending June thirtieth, nineteen hundred and nine, for the purpose and objects hereinafter expressed, namely: . . . Laboratory, Department of Agriculture: General Expenses, Bureau of Chemistry; . . . labor and expert work and all necessary expenses in conducting investigations in this Bureau in the City of Washington and elsewhere, and in collecting, digesting, reporting and illustrating the results of such investigations; . . . for all expenses necessary to carry into effect the provisions of the Act of June thirtieth, nineteen hundred and six, entitled ‘An Act for preventing the manufacture, sale, or transportation of adulterated, or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for other purposes.’””

Here Congress plainly differentiates between the different industries and duties of the Department of Agriculture. It enumerates severally the purposes for which money appropriated may be used. One class of purposes is the conducting of investigations and the digesting, reporting and illustrating of their results. Another class of the purposes is the execution of the provisions of the Food and Drugs Act. Thus Congress had notice of the different kinds of investigations conducted by the Department; it knew of the public inves-

tigations, such as the one complained of by appellant, and the private hearing conducted by the Secretary upon a proceeding as threatened under section 4 of the Food and Drugs Act. Congress approves of both, and bestows money for their purposes. When the Secretary decides to hold this hearing, he did so, as his answer says, for the purpose of more thoroughly investigating the question whether bleached flour was adulterated. Accordingly, he invited all persons interested to attend. This invitation was of course purely voluntary in so far as its acceptance by any one was concerned. The Secretary could compel no one to attend. The appellant attended and did so of its own will, and without the slightest compulsion or duress of any character. The hearing lasted several days, during which appellant offered testimony, and desired to be heard, and was heard. In view of this fact, it hardly lies in the mouth of appellant to question the propriety of a proceeding in which it so largely participated.

After the proceedings terminated, and the Secretary reached his decision, he published it. This was the publication of useful information for which Congress has appropriated money in the aforesaid act. The publication of such information, where no names are mentioned and no persons are injuriously affected, involves no hardship, and certainly is much further within the rule than in the case where the publication of the names of persons from whom adulterated seeds have been purchased was made under the authority of the act. Yet the publication of the names of these persons has been made and has been held to be proper as being useful information for the public, which Congress had the right to authorize to be published (25 Opinions of Attorney-General, 553). The finding of the Secretary as to bleached flour is certainly open to no attack on such ground, because no person, firm, or corporation has been named or assailed.

IV.

The Particular Relief Prayed for Impossible.

The weakness of the petition is perhaps best exposed by character of its prayers. It asks, first, that the writ issue to command the Secretary of Agriculture to withhold the recommendation of the prosecutions against manufacturers of and dealers in flour bleached by the Alsop process. The court has no jurisdiction to grant any such writ. In the first place, this would be merely another way of restraining a criminal prosecution. Where equity would lack jurisdiction to issue an injunction for such purpose, as a corollary there will be no jurisdiction to accomplish the same purpose by mandamus. The two remedies in such cases should be convertible, and where one does not lie the other also is unavailable.

That the court has no jurisdiction to anticipate the action in a trial of a criminal case and restrain its trial because it elects to hear in advance the defence of the person prosecuted, is well settled.

In re Sawyer, 124 U.S., 200.

So the court has no jurisdiction to restrain the Secretary of Agriculture from making recommendation to the District Attorney to prosecute some one mentioned in his recommendation.

Monongahela Bridge Co. vs. Taft, 34 W. L. R., 278.

The exceptions to this case, where equity will enjoin jurisdiction because of the prosecution under municipal ordinances which will injuriously affect property rights, is recognized—

Davis vs. Los Angeles, 189 U. S., 207.

Philadelphia Co. vs. Dickinson, Apr. Term Court of Appeals.

but there is no application of this exception to the case at bar; it involves no property right of appellant whatever.

On the other hand, if any one be prosecuted hereafter, upon the Secretary's recommendation, such person is guaranteed by the Food and Drugs Act the right to question the Secretary's decision and to fully present his defense in the proper court according to due process of law. Whether the proceeding be criminal under section 4, or civil under section 10 of the act, the person proceeded against has his day in court and has a full, adequate and complete remedy to challenge the law or the proceeding. In such case there is no room for the intervention of equity.

Fitts vs. McGee, 117 U. S., 516.

Where equity has no jurisdiction to enjoin, the writ of mandamus will not lie.

But in a larger sense, this prayer is impossible, for the reason that its allowance would involve necessarily the review by the court of the decision of the Secretary of Agriculture made within his jurisdiction. By the law the Secretary is required to inform himself on questions such as that involved in the case at bar, and to make his decision. If the Secretary has determined that flour bleached by the Alsop process is adulterated, there is no power in any other officer, court or agency to restrain him from reporting cases to the United States attorney for prosecution. On this determination he exercises a high degree of independent judgment and discretion which are not subject to be reviewed by the courts.

"In the one case the officer is required to abandon his right to exercise his personal judgment and to substitute that of the court by conforming

the act as it commands. In the other he is forbidden to do the act which his judgment and discretion tell him should be done. There can be no difference in the principle which forbids interference with the duties of these officers, whether it be by writ of mandamus or injunction."

Gaines vs. Thompson, 74 U. S., 247.

This familiar doctrine has been annunciated by the court in a long line of cases from the earliest times.

Decator vs. Paulding, 14 Peters, 497.

Dunlop vs. Black, 128 U. S., 47.

Seymour vs. S. C., 2 App. D. C., 240.

Riverside Oil Co. vs. Hitchcock, 190 U. S., 316.

But as has been pointed out above, this relief would be wholly nugatory. The Secretary has not stated that he intended recommending anyone for prosecution. But even if he should make so much recommendation, and even if the writ of mandamus should issue commanding him not to do so, it is obvious under section 5 of the Food and Drugs Act the district attorney might commence prosecution without such previous recommendation of the Secretary.

The utter vice, however, of this petition is shown by the further consideration of this prayer. If the appellant would have its way, and the mandamus should issue to command the Secretary to withhold recommendation of prosecutions against manufacturers of and dealers in flour bleached by the Alsop process, the extraordinary situation would result that the Secretary would be prevented from beginning prosecutions against persons guilty of violating the Food and Drugs Act at the instigation of one who did not fall under the jurisdiction of that law and could not be prosecuted under it. The Secretary would have decided that the bleaching of flour was in violation of the Food and Drugs Act,

and the business of the dealers in such bleached flour would be interfered with by the agents of the Secretary, in the shape of seizures and the like. Yet neither Secretary nor dealer could have a prosecution in the court to determine the correctness of the decision because an outside party, the appellant, who could not be prosecuted and could not be proceeded against, had tied the hands of the Secretary and kept him from going into court. Even though the miller should be anxious to have the case instituted against him and test the question, the appellant would have foreclosed the court and deprived the miller of a trial under section 4 of the act.

The second prayer of the petition is that the finding of the Secretary of Agriculture as announced in the publication of December 10, 1908, be revoked by the court and the Secretary be commanded to cancel and annul the same and ordered not to deliver or circulate additional copies thereof. In order to do this, the court must supersede the Secretary of Agriculture and decide what is bleached flour. That the court has no jurisdiction for such purpose is abundantly plain and has been referred to above. The Secretary as an official is entitled to his opinion as to the policy of his department, and the court has no power to make him change it. When that opinion assumes a concrete shape, when the Secretary recommends a prosecution, the defendant will have his day in court and will have a chance to present any objection of that decision which he may desire. But the court will not anticipate such proceeding. Much less will it attempt to assume control over the making of such decisions and thus eliminate the Secretary of Agriculture from the administration of the Food and Drugs Act.

The last prayer is that the writ issue to command the Secretary to proceed according to law. The appellant contends that if flour bleached by nitrogen-peroxide is

actually adulterated the Secretary is violating the law in not immediately recommending prosecutions. This is a disingenuous and false attitude of the appellant, which is entitled to no consideration. The Secretary of Agriculture is primarily charged with the administration of the Food and Drugs Act. He has discretion in the selection of time, place and method, when, where and according to which such prosecutions as he adjudges necessary shall begin. If the Secretary deem that it would be gratifying to the ends of law and justice that a period of time should elapse before prosecutions should commence against persons who have been extensively engaged in the bleaching of flour, in order that they should have the chance, if they wish to accept it, to conform themselves to the law and avoid great business loss, a decision of the Secretary of Agriculture in this behalf is well within his discretion, and is wholly beyond the review of the courts. This is what has taken place. In the exercise of extreme care and leniency the Secretary decided that the sudden revulsion of official opinion against the practice of bleaching flour which has long and extensively obtained, would redound in a financial and business loss so great that the ends to be subserved by prosecutions and the benefits derived therefrom would be materially reduced. Accordingly he fixed a period of time during which his notice might be recorded and obeyed. It may result, by the expiration of the time fixed in the notice, that millers will have adjusted themselves to the new situation and will have ceased to manufacture or deal in the adulterated product. It is not a miller who is before the court asking for the writ of mandamus. It is a case of the appellant who is not one to be affected by the ruling of the Secretary, nor one to whom the notice he gave applies.

The form of the prayer, of course, is utterly defenseless.

The courts can not issue a writ of mandamus commanding the Secretary, the head of an independent department, to obey the law or make any such general indefinite order. The high character of the position of appellee and the high credit to which he is entitled in the discharge of the manifold details of his department, raises the presumption, well accepted in the law, that he will do his duty. He is not above the law. There is no place under the law for such a privilege. If he disobey the law in a specific case he is subject to the courts, and the injured party may have redress; but he is entitled to the presumption that he will observe the legal commandments, and the court will not anticipate any variation on his part from his general course. It will not immaturely and precipitately warn him not to do what it presumes he will avoid.

It is therefore respectfully submitted that there is no status in the appellant to seek the relief of the writ of mandamus, nor jurisdiction in the court to grant it.

The judgment of the court below was right, and must be affirmed.

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